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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----) MDL No. 2804
IN RE: NATIONAL PRESCRIPTION)
OPIATE LITIGATION)
-----) Case No. 17-md-2804
THIS DOCUMENT RELATES TO:)
ALL CASES)
-----) Hon. Dan A. Polster

HIGHLY CONFIDENTIAL
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

VIDEOTAPED DEPOSITION OF
KELLY JAMES BAKER

January 24, 2019

Indianapolis, Indiana

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The videotaped deposition of KELLY JAMES
BAKER, called by the Plaintiffs for examination, taken
pursuant to the Federal Rules of Civil Procedure of
the United States District Courts pertaining to the
taking of depositions, taken before JULIANA F.
ZAJICEK, a Registered Professional Reporter and a
Certified Shorthand Reporter, at the Indianapolis
Marriott Downtown, Texas Room, 350 West Maryland
Street, Indianapolis, Indiana, on January 24, 2019, at
9:03 a.m.

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6 MR. ANTHONY MICHELETTI,
Golkow Litigation Services.

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1 I N D E X

2 WITNESS: PAGE:

3 KELLY JAMES BAKER

4 EXAM BY MR. ELSNER..... 11

5 EXAM BY MR. CLARK..... 366

6

7 *****

8

9 E X H I B I T S

10 CVS- BAKER EXHIBIT MARKED FOR ID

11 No. 1 Kelly Baker | LinkedIn 13

12 No. 2 7/17/13 E-mail chain with 21
attachment; CVS-MDLT1-000118931 -
13 934

14 No. 3 9/27/06 DEA letter sent to CVS 55
Indiana; CVS-MDLT1-000010552 - 555

15

No. 4 12/27/07 DEA letter sent to Dear 56
16 Registrant; CVS-MDLT1-000013535 -
536

17

No. 5 8/29/13 E-mail with attachment; 58
18 CVS-MDLT1-000009821 - 847

19 No. 6 1/4/13 E-mail with attachment; 68
CVS-MDLT1-000081372 - 373

20

No. 7 8/30/13 Item Review Report - 76
21 Control Drugs; CVS-MDLT1-000010672
- 757

22

No. 8 Controlled Drug - DEA Standard 92
23 Operating Procedures Manual, last
Revision date 4/18/13;
24 CVS-MDLT1-000008572 - 635

1		E X H I B I T S (Continued)	
2	CVS- BAKER	EXHIBIT	MARKED FOR ID
3	No. 9	1/27/11 E-mail chain with attachments; CVS-MDLT1-000112597 - 635	108
4	No. 10	3/26/12 E-mail with attachment; CVS-MDLT1-000109870 - 878	117
5		Report titled VIPERx PDMR - High Priority; CVS-MDLT1-000074450 - 454	133
6		Store metric sheet; CVS-MDLT1-000080069	141
7	No. 12	CVS-MDLT1-000010302 - 363	155
8	No. 13	11/29/12 E-mail chain with attachments; CVS-MDLT1-000083064 - 069	167
9	No. 14	7/16/12 E-mail with attachment; CVS-MDLT1-000112686 - 687	171
10		9/7/12 E-mail; CVS-MDLT1-000008249	184
11	No. 15	3/13/13 E-mail with attachment; CVS-MDLT1-000009848 - 855	198
12	No. 16	4/4/13 E-mail chain with attachment; CVS-MDLT1-000111877 - 879	202
13	No. 17	6/10/13 E-mail; CVS-MDLT1-000009678	208
14		6/11/13 E-mail chain; CVS-MDLT1-000009683	211
15	No. 18	Kelly Baker - Mid-Year Review - 2013 (Finalized); CVS-MDLT1-000121559 - 560	214
16	No. 19	6/10/13 E-mail; CVS-MDLT1-000014750	222
17	No. 20		
18	No. 21		
19	No. 22		

1		E X H I B I T S (Continued)	
2	CVS- BAKER	EXHIBIT	MARKED FOR ID
3	No. 23	6/10/13 E-mail chain; CVS-MDLT1-000030472 - 473	223
4		No. 24 6/10/13 E-mail; CVS-MDLT1-000119953	226
5		No. 25 7/9/13 E-mail chain; CVS-MDLT1-000077946 - 948	229
6		No. 26 7/9/13 E-mail chain; CVS-MDLT1-000051586 - 588	239
7		No. 27 7/16/13 E-mail chain; CVS-MDLT1-000078116 - 119	247
8		No. 28 7/17/13 E-mail chain; CVS-MDLT1-000076114 - 117	251
9		No. 29 12/20/12 E-mail; CVS-MDLT1-000109775	257
10		No. 30 7/16/13 E-mail chain; CVS-MDLT1-000077910 - 911	263
11		No. 31 7/16/13 E-mail chain; CVS-MDLT1-000028615 - 617	269
12		No. 32 7/18/13 E-mail chain; CVS-MDLT1-000029478 - 479	271
13		No. 33 7/23/13 E-mail chain; CVS-MDLT1-000077953 - 954	276
14		No. 34 11/13/13 E-mail chain; CVS-MDLT1-000017255 - 258	278
15		No. 35 7/17/13 E-mail chain; CVS-MDLT1-000077973 - 974	284
16		No. 36 7/18/13 E-mail chain; CVS-MDLT1-000118897 - 898	288
17		No. 37 9/27/13 E-mail chain; CVS-MDLT1-000017250	292
18			
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1		E X H I B I T S (Continued)	
2	CVS- BAKER EXHIBIT		MARKED FOR ID
3	No. 38	8/12/13 E-mail chain; CVS-MDLT1-000076095 - 096	298
4			
	No. 39	9/12/13 E-mail chain; CVS-MDLT1-000119704 - 705	301
5			
6	No. 40	9/16/13 E-mail chain; CVS-MDLT1-000102845 - 846	305
7			
	No. 41	9/13/13 E-mail chain; CVS-MDLT1-000103068	309
8			
9	No. 42	9/17/13 E-mail chain; CVS-MDLT1-000099708 - 709	311
10			
	No. 43	7/23/13 E-mail chain; CVS-MDLT1-000057777	318
11			
12	No. 44	9/17/13 E-mail chain; CVS-MDLT1-000119935	320
13			
	No. 45	10/11/13 E-mail chain; CVS-MDLT1-000119938	325
14			
15	No. 46	11/21/13 E-mail with attachments; CVS-MDLT1-000000409 - 420	334
16			
	No. 47	CVS Indianapolis, IN DC DEA Visit 8/5 - 8/8/2013, Audit Report; CVS-MDLT1-000008389 - 395	337
17			
18			
	No. 48	11/15/13 E-mail chain; CVS-MDLT1-000092932	352
19			
20	No. 49	11/25/13 E-mail; CVS-MDLT1-000076135	355
21			
	No. 50	Closing letter from the DEA to CVS Indiana, signed 12/31/15; CVS-MDLT1-000008014 - 015	363
22			
23			
24			

1 THE VIDEOGRAPHER: We are now on the record. My
2 name is Anthony Micheletto. I am the videographer for
3 Golkow Litigation Services.

4 Today's date is January 24th, 2019. The
5 time is 9:03 a.m. as indicated on the video screen.

6 This video deposition is being held in
7 Indianapolis, Indiana, in the matter of In Re National
8 Prescription Opiate Litigation for the United States
9 District Court for the Northern District of Ohio,
10 Eastern Division.

11 The deponent is Kelly Baker.

12 Will counsel please identify themselves
13 for the video record.

14 MR. ELSNER: My name is Michael Elsner from the
15 law firm of Motley Rice on behalf of Plaintiffs.

16 MR. GOETZ: Dan Goetz on behalf of the
17 Plaintiffs.

18 MS. HARMON: Sarah Harmon of Armstrong &
19 Teasdale on behalf of Cardinal Health.

20 MR. CLARK: Miles Clark from Zuckerman Spaeder
21 on behalf of CVS Indiana, LLC, CVS RX Services, Inc.
22 and the witness.

23 THE VIDEOGRAPHER: Counsel on the phone.

24 MR. MILLER: Hi. This is Jake Miller from

1 Arnold & Porter on behalf of the Endo and Par
2 Defendants.

3 MR. MANNIX: Paul --

4 MR. KELLY: Kevin Kelly from Coving -- Kevin
5 Kelly from Covington & Burling on behalf of McKesson.

6 MR. MANNIX: Paul Mannix with Marcus & Shapira
7 on behalf of HBC Services.

8 THE VIDEOGRAPHER: Okay. Our court reporter
9 today is Juliana Zajicek.

10 Please swear in the witness.

11 (WHEREUPON, the witness was duly
12 sworn.)

13 KELLY JAMES BAKER,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. ELSNER:

18 Q. Good morning. My name is Michael Elsner
19 and I represent the Plaintiffs in the action. I'm
20 going to be asking you some questions this morning.

21 A. Okay.

22 Q. Could you tell us your full name, please?

23 A. I am Kelly James Baker.

24 Q. And how old are you?

1 A. I am 51.

2 Q. And where do you live?

3 A. I live in Frankfort, Indiana.

4 Q. Okay. How far is that from Indianapolis?

5 A. It's about an hour.

6 Q. Okay. And did you attend Ivy Tech

7 Community College?

8 A. Uh, yeah, so, yeah. Yeah.

9 Q. Okay. And what did you study when you
10 were there?

11 A. Computer infor -- I think they called it
12 computer information technology.

13 Q. Okay. Did you obtain a degree?

14 A. Yeah, I got an associate's, but I already
15 had a degree, so I never actually went through
16 graduation.

17 Q. Okay. And what year did you attend Ivy
18 Tech Community College?

19 A. It had to be about seven years ago. I
20 can't remember the exact date because it was -- it was
21 while I was home with my daughter.

22 Q. Okay.

23 A. I -- I -- I attended some classes, some
24 extra computer classes --

1 Q. Okay.

2 A. -- to supplement what I already had.

3 Q. Was this before or after you started
4 working with CVS?

5 A. I think it was before.

6 (WHEREUPON, a certain document was
7 marked CVS - Elsner Deposition
8 Exhibit No. 1, for identification, as
9 of 01/24/2019.)

10 BY MR. ELSNER:

11 Q. I am going to just mark for you as the
12 first exhibit in the -- in the deposition, this is a
13 copy of your -- of your LinkedIn page. It may just
14 help us get through some of your background a little
15 bit, make it easier.

16 A. Oh, okay. Yeah.

17 Q. Do you recognize that?

18 A. Yeah, that looks like me. Yeah, that's a
19 terrible picture, but yeah.

20 Q. I don't think it is so bad. It is better
21 in -- in color. On the screen you can see that.

22 A. Oh, I -- I was actually holding the
23 camera, so...

24 Q. Okay. And did you write -- did you write

1 this, your LinkedIn page?

2 A. Yeah, I think so.

3 Q. Okay.

4 A. I don't look at it a lot, you know, but...

5 Q. Okay. I'm also -- you said you also --
6 you already had an associate degree.

7 You attended Purdue University as an
8 undergraduate, right?

9 A. Yep, undergraduate and a graduate.

10 Q. And a graduate, right.

11 And you -- what was your degree in as an
12 undergraduate?

13 A. An undergraduate, it was considered
14 aeronautical engineering technology, AOT.

15 Q. Okay. And -- and then you got a master's
16 degree, is that right?

17 A. Correct.

18 Q. And what was your master's in?

19 A. At the time they called it a master's of
20 science in business. It is basically an MBA. They've
21 changed the name now to an MBA, but then, Purdue being
22 a technical school, they wanted to give it a technical
23 connotation.

24 Q. Okay. And are you an engineer?

1 A. I am a quality engineer.

2 Q. Okay. And you got your master's degree
3 from Purdue between 1998 and 2001, does that sound
4 about right?

5 A. No. I graduated in '98.

6 Q. You graduated in '98 --

7 A. Right.

8 Q. -- with the degree?

9 A. Correct.

10 Q. The master's degree?

11 A. Correct.

12 Q. Okay. When did you graduate for your
13 undergrad? And did you work in between or --

14 A. I graduated in '94.

15 Q. Okay.

16 A. I went to work for a while, then -- only
17 about a year or so, then I decided to go back to
18 school.

19 Q. Okay. What did you do in that year?

20 A. I worked for a local airport, started out
21 at a local airport in Frankfort --

22 Q. Okay.

23 A. -- as their mechanic, and then I went to
24 work for -- which is now a Rolls Royce but at the time

1 it was owned by Allison Engine Company here in
2 Indianapolis, technical writer.

3 Q. What -- what did you do when you finished
4 your MBA from Purdue, what was your first job?

5 A. I went to work for Ford Motor Company.

6 Q. Okay. And what year was that?

7 A. That was in '98.

8 Q. And how long did you work for Ford Motor
9 Company?

10 A. Well, ten years, but somewhere along the
11 line I became a Visteon employee because they die --
12 they divested their plant. It just happened to be
13 where you were at at the time. It wasn't -- real
14 similar to, like, Delphi and Delco situation. I don't
15 remember where that delineation happened, just one day
16 your check said Ford, the next day it said Visteon.
17 But it was technically, it's the same people, same
18 place, everything, so...

19 Q. And -- and they were -- what were they --
20 what were they doing, is this building automobile
21 plants?

22 A. Yeah, automotive.

23 Q. Okay. And -- and what were you doing for
24 them?

1 A. I did several different roles. I went in
2 a college rotation program. I did, like, logistics,
3 I -- I was an auditor for a while, traveled around
4 doing audits. And then I came back to Indianapolis
5 plant, because I am from Indiana, and then I worked as
6 a quality engineer at that plant.

7 Q. Is this all -- and -- and when you say "at
8 that plant," you mean -- is that Visteon?

9 A. That -- it was an Visteon plant at the
10 time.

11 Q. Okay.

12 A. It -- it -- it is weird because it was all
13 staffed by Ford hourly people, Ford the union, and all
14 of that, and I was in the salary. It got kind of
15 muddled. It is hard to keep track of, but...

16 Q. And is it fair to say you were -- you were
17 working sort of as a -- as a quality engineer and in
18 quality assurance, is that accurate?

19 A. Correct.

20 Q. Okay. And then -- and then at some point
21 in -- and tell me if I'm wrong -- maybe July of 2007,
22 you started working for, is it Aerodyne Engineering?

23 A. Aerodyne Engineering.

24 Q. Okay.

1 A. After --

2 Q. And what did they do?

3 A. They make components for aerospace
4 applications and gas turbines, some even energy.

5 Q. Okay.

6 A. It's a high -- kind of a high-end
7 engineering firm, pretty small.

8 Q. And -- and were you again a quality
9 assurance --

10 A. I was a --

11 Q. -- manager?

12 A. -- quality assurance manager. I don't
13 know if you are familiar with ISO 9001.

14 Q. I am not, but I see it indicated.

15 A. You'll see it in places and you'll see it,
16 like, on the water company. Anyway, it is quality
17 management system to be certified as a third-party
18 registrar. I installed their system for them because
19 the -- their customer base was leaning on them to be
20 certified.

21 Q. Okay.

22 A. They are common in manufacturing.

23 Q. And I saw that you worked there until
24 about March of 2009, does that --

1 A. Correct.

2 Q. -- sound about right?

3 Okay. And -- and then why did you leave
4 Aerodyne?

5 A. They had a round of layoffs. It was --
6 you know, like I say, it was kind of funny because --
7 well, not funny. Being a small company, coming from
8 Ford, nothing moves on a dime, but when I got there in
9 March we were having a pizza party to celebrate their
10 previous year's record sales. By the next month,
11 well, they were laying everybody off.

12 Yeah, so -- and so I got laid off. And
13 I'll answer your next question. I became a
14 stay-at-home dad at that time.

15 Q. Okay.

16 A. My wife was a pharmacist, she was
17 pregnant, and our baby was born maybe almost like
18 three weeks after I got laid off, so...

19 Q. Okay. And you said you're --

20 MR. CLARK: And I'm sorry. You can wait until
21 he asks the question before you answer it, but...

22 BY THE WITNESS:

23 A. Well, I knew it.

24 BY MR. ELSNER:

1 Q. Well, in this -- in this background
2 questions it's pretty --

3 A. It is like being on a job interview.

4 Q. It is a different job, but yes.

5 You said your wife worked as a pharmacist.
6 For whom did she work?

7 A. It's called Eskenazi Health. It is the
8 state -- or not really state, but the city hospital.

9 Q. Okay.

10 A. It was -- it was called Wishard at the
11 time, but they got a grant, I think, of something and
12 they've changed the name. It is downtown
13 Indianapolis.

14 Q. Okay. And how -- is she still working as
15 a pharmacist?

16 A. Correct.

17 Q. Where does she work now?

18 A. I do not know. She works in that system,
19 but I don't know where. We are no longer married,
20 so...

21 Q. Okay. And so at some point in time in
22 around 2011 you started to do some work at the VA
23 hospital, is that right?

24 A. Yeah, I -- I was part -- that was part of

1 the Ivy Tech curriculum, you know, you do some
2 volunteer work. I did some volunteer work for the VA
3 hospital in their IT department.

4 Q. Okay. And you did that through, what,
5 almost a year, is that right?

6 A. I think so.

7 Q. You know, I've -- I've got also -- why
8 don't we mark this as Exhibit 2. This may be a little
9 bit easier.

10 (WHEREUPON, a certain document was
11 marked CVS - Elsner Deposition
12 Exhibit No. 2, for identification, as
13 of 01/24/2019.)

14 BY MR. ELSNER:

15 Q. Mr. Kelly, this is a -- the front page is
16 an e-mail, but it is forwarding your resume back in
17 2013. And if you turn to the second page, it's a copy
18 of the resume that you --

19 A. Yeah --

20 Q. -- gave CVS.

21 A. Yeah.

22 Q. Is that it? Does that look about right?

23 A. Yeah.

24 Q. Okay.

1 And it -- it lists, it says your current
2 work experience, the very first thing, Indianapolis
3 Veterans VA Hospital, is that right?

4 A. Yeah.

5 Q. Okay.

6 A. And I wasn't being paid. That was a
7 volunteer position.

8 Q. That was a volunteer work.

9 A. Yeah.

10 Q. Okay.

11 And -- and then, how is it that you came
12 to be hired by CVS?

13 A. I decided to return to the workforce and I
14 applied for a posting on LinkedIn, actually.

15 Q. Okay. What was the post for?

16 A. I don't remember what it was called, it
17 has been so long ago. It was for a type of analyst
18 position and, I think, talked about numbers and trend
19 analysis and my quality background. It seemed like a
20 pretty logical fit, so I applied.

21 Q. Okay. Who did you interview with when you
22 were hired?

23 A. When I was -- I interviewed with Aaron
24 Burtner and, oh, I can't remember the name, you'll

1 bring her up, when you -- when you bring her name up
2 I'll -- I'll remember it, which was -- I think she was
3 his boss at the time.

4 Q. His boss? Pam Hinkle?

5 A. Pam Hinkle, that was it.

6 Q. That --

7 A. That was, yeah, Pam Hinkle.

8 Q. Okay.

9 A. I think that was the only time I ever met
10 Pam.

11 Q. And do you -- Aaron Burtner was your --
12 was he your immediate supervisor --

13 A. Correct.

14 Q. -- when you joined CVS?

15 A. Yeah.

16 Q. And was he a -- a suspicious order
17 monitoring analyst, do you recall?

18 A. I don't know.

19 Q. Or manager?

20 A. I don't -- I didn't -- he was the manager.
21 I knew he had a manager role, I believe, and -- and
22 that's all I can remember. I can't even --

23 Q. Do you remember what Pam Hinkle's role
24 was?

1 A. No. I -- like I say, she interviewed me
2 and I never saw her again after that.

3 Q. Okay. Did you interview with anybody
4 else, did you interview with Mark Nicastro or anybody
5 else?

6 A. Not that I can remember, you know. I --
7 not that I can remember. All I remember, the one
8 interview, because I -- the only reason I re --
9 remember that is because I brought in all of my
10 statistical analysis slides from automotive and I was
11 showing him all of these little graphs and they're
12 like, Oh, wow, you know.

13 Q. And at that point in time did you have any
14 experience working in -- with pharmaceuticals?

15 A. With pharmaceuticals, no.

16 Q. Okay. And did you have any experience
17 with controlled substances, controlled drugs?

18 MR. CLARK: Object to -- object to the form.

19 THE WITNESS: What did you say?

20 MR. CLARK: I -- sorry. I objected to the form
21 of the question.

22 THE WITNESS: Oh. Oh.

23 MR. CLARK: You can still answer.

24 BY THE WITNESS:

1 A. No. You mean in a professional format?

2 BY MR. ELSNER:

3 Q. I -- I don't mean did you take them
4 yourself.

5 A. No, I didn't say -- that could be --

6 Q. I mean in a professional sense, did you --

7 A. No, no, no, no, really.

8 Q. -- did you -- did you work at all with
9 controlled substances in any of your prior work?

10 A. No, no.

11 Q. All of your prior work was -- it's sort of
12 in engineering, wasn't it?

13 A. Manufacturing, yes.

14 Q. Okay. All right.

15 And you worked at CVS from December
16 of 2012 through November of 2013, is that right?

17 A. Apparently. I don't remember. I thought
18 it was something like six months. It's such a flash
19 in the past, but I don't...

20 Q. If -- if you look back to Exhibit 1, which
21 is your LinkedIn page, you put some -- you put some
22 dates here?

23 A. Yeah.

24 Q. And if you look at the CVS Health section,

1 which is on the second page.

2 MR. ELSNER: John, this is Exhibit 1.

3 BY THE WITNESS:

4 A. Yeah, that's what it says.

5 BY MR. ELSNER:

6 Q. You -- you -- you wrote here on your
7 LinkedIn page that it was between December 2012 and
8 November of 2013.

9 Does that -- is that accurate?

10 A. I think so.

11 Q. Okay. I mean, you -- you -- you did your
12 best to make your LinkedIn page as accurate as you
13 could?

14 A. Yeah, I did at that time, you know.

15 MR. CLARK: Mike, I just wanted to note for the
16 record I see here on this version that's printed out
17 of the LinkedIn page under the CVS, at the end there
18 is a -- it says "see more." I assume that the actual
19 LinkedIn page has further description.

20 MR. ELSNER: What we may try to do on a break is
21 we'll see if we can pull that out. I -- I thought it
22 was more complete, but I -- I don't think there is
23 much else there, but we'll get it printed out.

24 MR. CLARK: No, I just wanted to note it for the

1 record.

2 MR. ELSNER: I understand.

3 BY MR. ELSNER:

4 Q. After you left CVS you started work as a
5 quality engineer -- engineer at Voestalpine, is
6 that --

7 A. Yeah.

8 Q. I'm sure I butchered that. How do you say
9 it?

10 A. Well, that's a European firm. It's
11 Voestalpine, I think. Well, we never knew. Somebody
12 said Voestalpine, who knows, you know, but -- but,
13 yeah, it's here in Lafayette.

14 Q. Okay. And what type of work did you do
15 for them?

16 A. Quality engineering.

17 Q. Okay. And -- and you were there for about
18 two years, is that right, 2012 to '14?

19 A. No, no, it wasn't very long. Because the
20 only reason I can remember -- true --

21 Q. Oh, you had --

22 A. -- the reason I left, they got hit by a
23 tornado.

24 Q. Oh.

1 A. And it was even in the news. And it took
2 out half of the building, so our capacity went back
3 overseas, so I really had nothing to do.

4 Q. All right.

5 A. And then I went up to Peru.

6 Q. Okay. So on your ap -- on your LinkedIn
7 page just above CVS, it -- it lists that company and
8 it says November 2013 through May of 2014, so about
9 seven months, is that right?

10 A. Yeah, seven months, yeah, because I wasn't
11 there very long, I knew that.

12 Q. And then -- and then you started working
13 for -- on the first page, what is this company on the
14 bottom there?

15 A. That is Heraeus Miller. It's another
16 firm -- European firm. So it's Heraeus Electro Nite.

17 Q. I learned my lesson not to try to
18 pronounce it.

19 A. Yeah.

20 Q. I'm going to let you do that.

21 And you worked there from July 2014 to
22 November 2015?

23 A. Yeah. That's up in Peru, Indiana.

24 Q. Okay. And also as a quality engineer?

1 A. Correct.

2 Q. All right. And why did you leave that
3 position?

4 A. Another -- they had a big round of
5 layoffs. Quality is typically overhead for most of
6 the companies, so there were years -- you get used to
7 be being on the chopping block. We are a cost center,
8 so. They closed a plant up in Pennsylvania. They
9 supported the steel industry, and so lacking in
10 economics, so, yeah, everybody was crunching at that
11 time, so. Which is probably more than you wanted to
12 know, but...

13 Q. How -- how many people got laid off
14 roughly?

15 A. Oh, I don't know. I know me and two other
16 engineers, and they closed the whole plant in
17 Pennsylvania and brought some of them down. But once
18 you're out, you're out. They -- you're out the door.
19 They don't let you come back in.

20 Q. Okay. And then -- and then it looks -- at
21 least according to your LinkedIn page there, the next
22 position here is as another quality assurance
23 consultant for Sommer Met -- Metalcraft, is that
24 right, on the --

1 A. Sommer Metalcraft. Well, no, because,
2 see, I did some other jobs --

3 Q. Okay.

4 A. -- in that time. Now, I --

5 Q. What -- what did you do between Heraeus
6 Electro or the company called --

7 A. I had some -- some contract hourly jobs,
8 you know, just to pay the bills. I worked for the gas
9 company for a while, and a --

10 Q. Okay.

11 A. -- and that. Now --

12 Q. And who else?

13 A. And I don't even remember all of them.

14 I also -- all of this time, and probably
15 for the last 15 years, maybe, I have been a motorcycle
16 safety instructor.

17 Q. Yes, I see that here.

18 A. I do that on weekends and the summer.

19 Q. Okay.

20 A. And so I kind of picked that -- you know,
21 I keep doing that during this time and...

22 Q. Is that a paid position?

23 A. Yes.

24 Q. Okay. So you had -- you had a series

1 of -- of contract jobs --

2 A. Yeah.

3 Q. -- from about November 2015 to

4 January 2018, does that -- or I guess May of 2008 --

5 or, no, January of 2018.

6 Does that seem right?

7 A. Well, nah -- yeah -- well, there were some

8 other -- yes, some quality jobs that didn't last very

9 long and, you know, contract like that.

10 Q. Okay.

11 A. Engineering. Nothing to really --

12 suitable for the resume.

13 Q. All right. And then -- and it has here

14 that you worked for this Sommer Metalcraft as a

15 qual -- this --

16 A. Yeah.

17 Q. -- again, as a quality assurance?

18 A. That's what -- that's my last role before

19 this role now.

20 Q. Okay. And how long did you work there?

21 A. Three months.

22 Q. Three months.

23 A. Just --

24 Q. What happened there?

1 A. They closed the plant.

2 Q. All right.

3 A. They were like, Hey, sorry, we thought it
4 was going to work out, but we are closing the plant,
5 so...

6 Q. Okay.

7 A. It was a family-owned business.

8 Q. All right. And then -- then who do you
9 work with today?

10 A. FLIR.

11 Q. Okay. And you started there in May
12 of 2018?

13 A. No. I think it was closer to June.

14 Q. Okay.

15 A. June.

16 Yeah, there was a little bit of time off
17 in between.

18 Q. All right. And -- and -- and what do you
19 do for them?

20 A. Quality engineer.

21 Q. Okay. So all of your positions, except
22 for the one position at CVS, have generally been in
23 quality assurance or quality engineer, is that...?

24 MR. CLARK: Object to the form.

1 BY THE WITNESS:

2 A. I wouldn't say that specifically because
3 at Ford I did a little bit of everything.

4 BY MR. ELSNER:

5 Q. Okay.

6 A. I only -- I ended up in quality at the
7 tail end of my tenure at Ford. You know, I did -- I
8 came in at quality rotation, I did some -- I did some
9 finance, some statistics -- or I -- I had an stint in
10 the finance department, I did some logistics, shipping
11 and receiving, I was supervisor of metrology.

12 Q. But -- but most of your jobs were as an
13 engineer?

14 A. Yeah --

15 Q. Is that fair?

16 A. -- that's what I recall.

17 Q. Okay. And -- and you have a degree in
18 that, right?

19 A. Well, I have a general degree.

20 Q. But a master's degree?

21 A. Yes.

22 Q. Okay. Let's go back to -- well, let me
23 say this: What did you do to prepare for today's
24 deposition?

1 You are not currently employed at CVS, is
2 that right?

3 A. No, no.

4 Q. Okay. And who contacted you to let you
5 know that you were going to be deposed in this case?

6 A. I believe it was Eric, initially --

7 Q. Okay.

8 A. -- through you.

9 Q. And -- and he is one of the lawyers that
10 represents CVS?

11 A. Correct.

12 Q. Is that right? Okay.

13 A. Via phone call.

14 Q. And what did he tell you that we were
15 going to -- the reason for your deposition?

16 Did you ask him?

17 A. Well, yeah. He just told me that I wasn't
18 being, and he said that we -- you need to be at --
19 deposed.

20 Q. Okay. Did --

21 MR. CLARK: And I'm --

22 MR. ELSNER: I'll try to be careful.

23 MR. CLARK: -- just going to object to -- yeah.

24 BY MR. ELSNER:

1 Q. Did you --

2 MR. CLARK: And I just want to -- sorry, before
3 it's -- I'm just going to caution you not to testify
4 about the substance of the conversations you've had
5 with --

6 THE WITNESS: Yeah, yeah, yeah, yeah, exactly.

7 MR. CLARK: -- Mr. Delinsky or me.

8 BY MR. ELSNER:

9 Q. After you decided to use them, did -- did
10 they tell you that you could hire your own counsel if
11 you want or that you could come without a lawyer?

12 A. Did --

13 MR. CLARK: Object to the form.

14 And, again, I'm going to instruct you not
15 to testify about the substance of your conversation.

16 BY THE WITNESS:

17 A. Yeah, yeah, that's -- to my understanding,
18 that's privileged.

19 BY MR. ELSNER:

20 Q. Are you being compensated in any way to
21 appear here today?

22 A. Nope.

23 Q. Okay. Did -- did you talk with anyone
24 other than the lawyers for CVS about your deposition

1 today?

2 A. No.

3 Q. Okay. No other former employees of CVS,
4 have you had any communication with them?

5 A. Uhn-uhn.

6 Q. No?

7 A. No, I mean, other than -- I -- Andy Eck is
8 a friend on Facebook, but we don't converse. I see
9 pictures of his kids, but that's...

10 Q. Okay. But did you talk to Andy Eck about
11 your deposition?

12 A. Nah.

13 Q. Did you talk to Andy Eck about the lawsuit
14 at all?

15 A. I don't think I talked -- I don't -- like
16 I say, I don't actually talk to him. I just put a
17 "like."

18 Q. Okay. You've just seen his -- you've just
19 seen his Facebook posts?

20 A. Yeah.

21 Q. Okay. Do you -- do you have any documents
22 at your house from the time you worked at CVS? Did
23 you keep any materials there?

24 A. No documents. I'm -- I may have a key

1 chain, but that's it.

2 Q. A key chain?

3 A. Yeah.

4 Q. Okay.

5 All right. To prepare for your
6 deposition, did you speak with anyone other than
7 lawyers for CVS about the deposition?

8 A. I mean, I -- I told work I had to go do
9 this --

10 Q. Oh, sure.

11 A. -- you know, and that I won't be here
12 today, you know.

13 Q. Okay.

14 A. Other than that, I mean...

15 Q. And you met with counsel to prepare for
16 your deposition, is that right?

17 A. Correct.

18 Q. Okay. And who did you meet with?

19 A. Miles.

20 Q. And how -- how long -- how long did you
21 meet with Miles, how many days and how much time each
22 day?

23 MR. CLARK: Object to the form.

24 BY THE WITNESS:

1 A. I don't know how long. I just -- I know
2 by number of meals we had, which was four, so.

3 BY MR. ELSNER:

4 Q. Four meals, okay.

5 So did you meet with him on multiple days?
6 You didn't eat four meals in one day, right?

7 A. Yeah, yeah, yeah, it was usually a little
8 bit of time after work at the local LaQuinta Inn there
9 in Frankfort we'd sit down and...

10 Q. Okay. And so you'd have a meal and how
11 long would you talk, roughly?

12 A. An hour or two.

13 Q. An hour or two.

14 Did he show you documents, just yes or no?

15 A. Yes.

16 Q. Okay. And did you review those documents?

17 A. Yes.

18 Q. Okay. Did you meet with any other lawyers
19 representing CVS?

20 A. Uhn-uhn.

21 Q. Do you have any e-mails, text messages
22 with any -- anyone you worked with at CVS?

23 MR. CLARK: Object to the form.

24 BY THE WITNESS:

1 A. Did I?

2 BY MR. ELSNER:

3 Q. Do you?

4 A. Do I. Not normally. I haven't talked to
5 anybody in a long time. Now, I have -- I did get a --
6 a text from Andy, just one saying, Baker, is this
7 still your number? I'm like, Uh, I'm like, Hey, you
8 know, and that was it.

9 Q. Okay.

10 A. Because I -- I really haven't talked to
11 anybody in a long time.

12 Q. Okay. You've never worked in a pharmacy
13 before, have you?

14 A. No.

15 Q. Okay. And prior to joining CVS, you --
16 you didn't have any prior work experience with
17 controlled substances, did you?

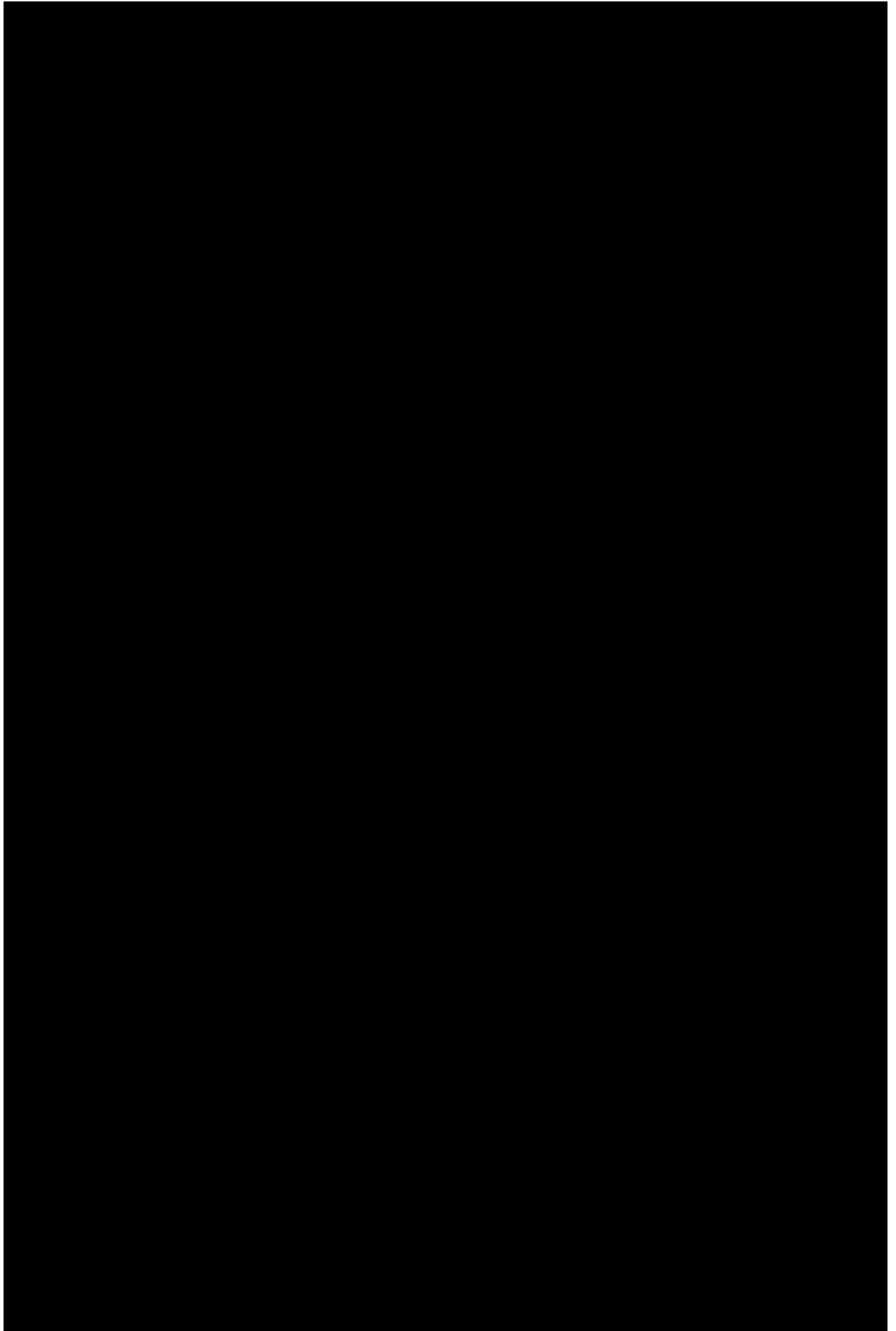
18 A. No, other than --

19 Q. Okay.

20 A. -- than being married, my ex-wife being a
21 pharmacist.

22 Q. That is your only exposure, right?

23 A. Yeah.



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22 Q. Okay. You -- you wrote in your LinkedIn
23 page that you were -- that you were -- you -- you
24 analyze -- if we go back to the LinkedIn page, this --

1 the first bullet:

2 "Analyze trend and transaction data for
3 controlled substance transactions..."

4 We had it and now we just lost it.

5 MR. ELSNER: It is down under CVS, John.

6 BY THE WITNESS:

7 A. Yeah, yeah.

8 BY MR. ELSNER:

9 Q. Sorry. I'm just going to get it up on the
10 screen so that everyone can follow us.

11 "Analyze trend and transaction data for
12 controlled substance transactions for over 10,000
13 stores."

14 Is that -- is that what you wrote?

15 A. Well, yeah, I obviously wrote it, so...

16 Q. Okay.

17 And so what you were doing is you were
18 reviewing orders of controlled substances across all
19 CVS pharmacies around the country, is that right?

20 A. I believe so.

21

22

23

24

1 Q. Well, regardless, but it was all the --

2 A. Yeah.

3 Q. -- it was all of the CVS pharmacies around
4 the country?

5 A. Yeah, right.

6 Q. Okay. You also wrote that you: "Target
7 shrinkage and illegal activities" and "Report findings
8 to the FDA."

9 What does that mean?

10 A. I don't know. I can't remember, to tell
11 you the truth.

12 I remember at the time trying to make this
13 sound -- make it understandable for non-people, you
14 know, because --

15 Q. So --

16 A. -- somebody from the factory would say,
17 what were you doing. I don't remember what that
18 meant, shrinkage. And like I say, I haven't did this
19 job for six years, so I don't know.

20 Q. No. I'm -- I'm just trying to understand
21 what you wrote.

22 So, were -- did you have any involvement
23 with -- with investigating illegal activities at CVS,
24 like thefts of controlled substances or anything like

1 that?

2 MR. CLARK: Object to the form.

3 BY THE WITNESS:

4 A. No, I didn't.

5 BY MR. ELSNER:

6 Q. Okay.

7 You next write that you: "Developed
8 metrics and algorithms for the development of a
9 tracking system" with a budget of \$650,000?

10 A. Yeah.

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19 Q. Right. I mean, and you were -- you're
20 mainly focused on trying here in your LinkedIn page to
21 create something that would explain what you were
22 doing --

23 A. Yeah.

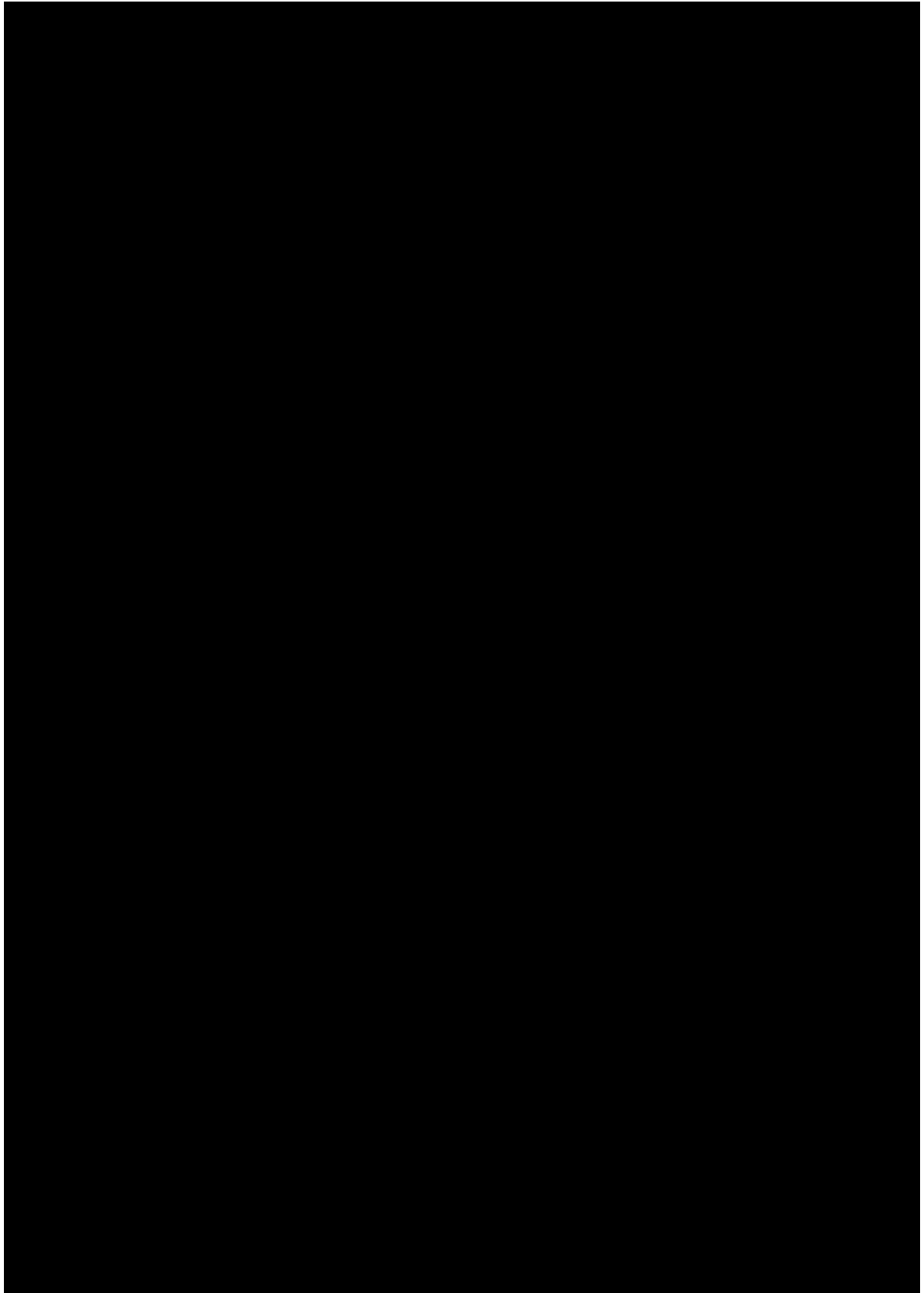
24 Q. -- for people who work in engineering

1 and --

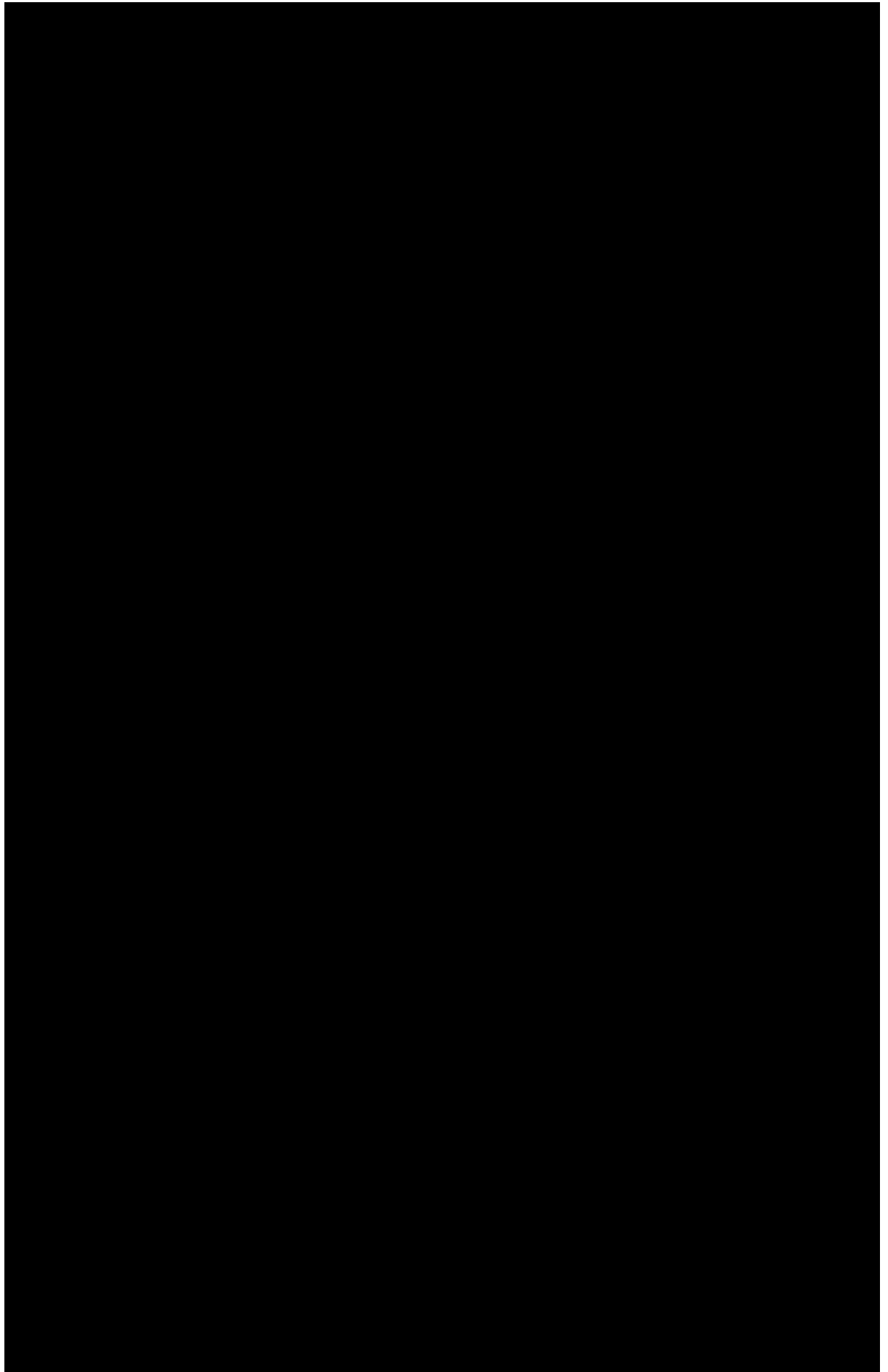
2 A. Yeah.

3 Q. -- in manufacturing, right?

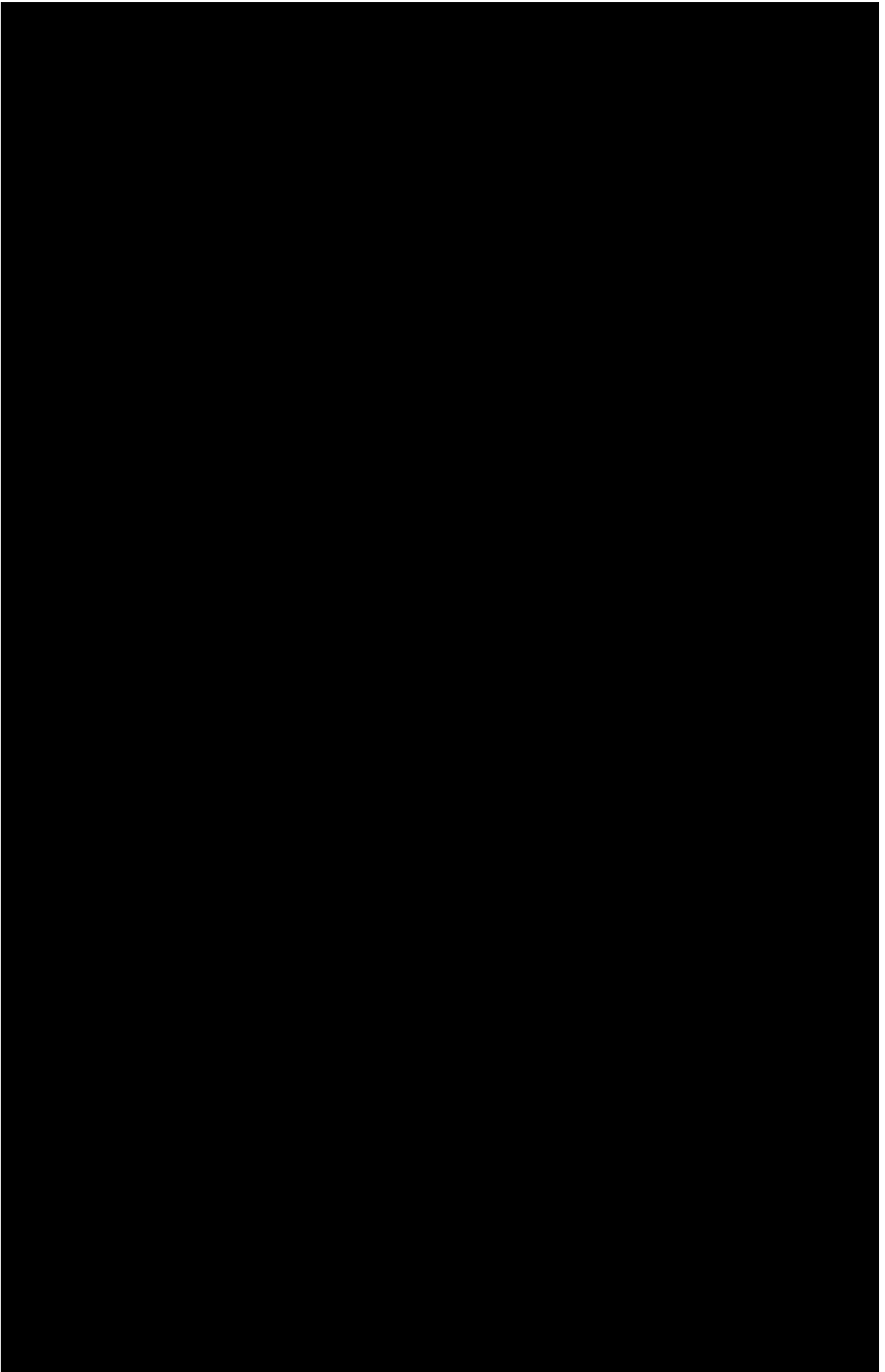
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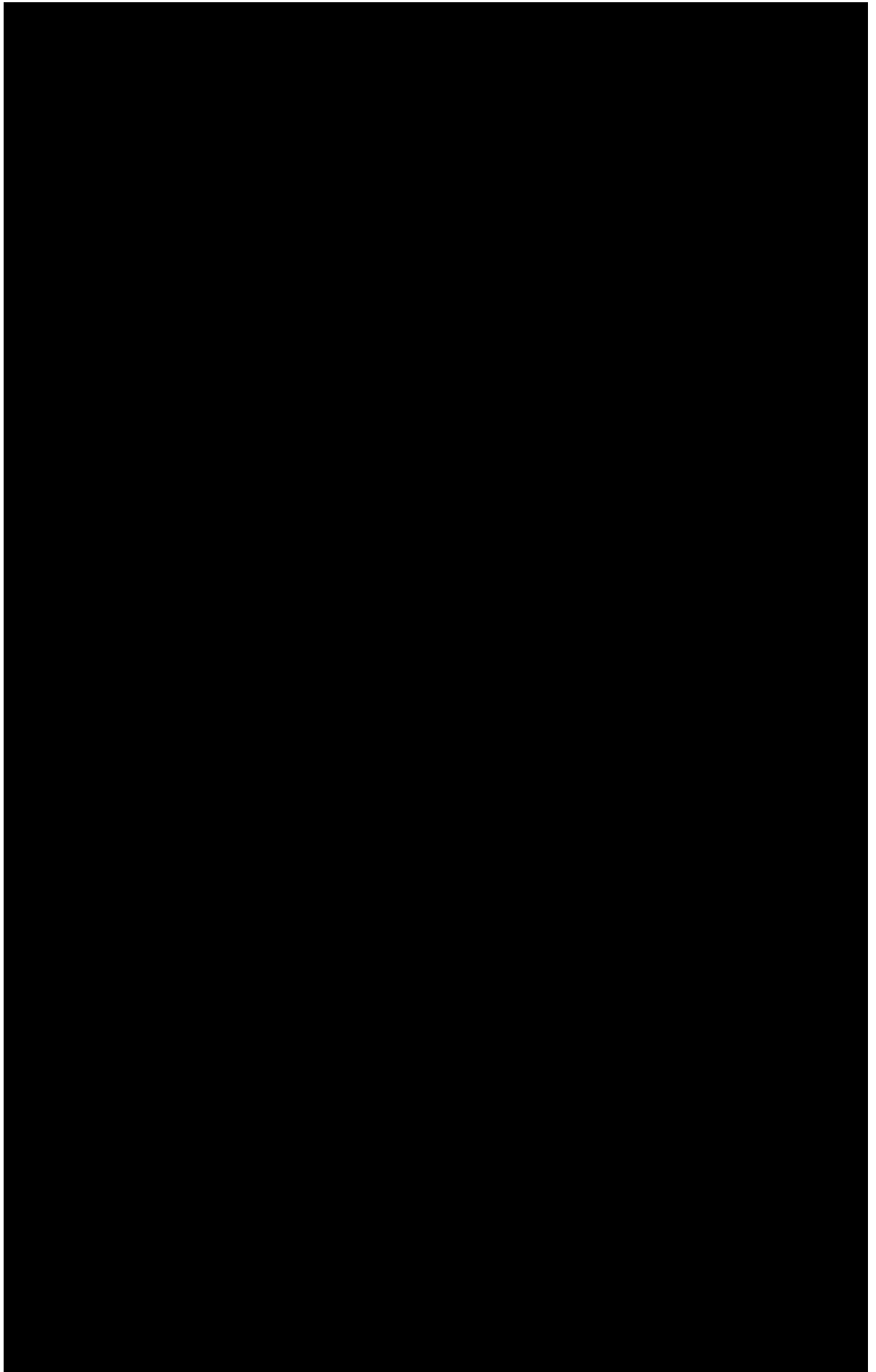
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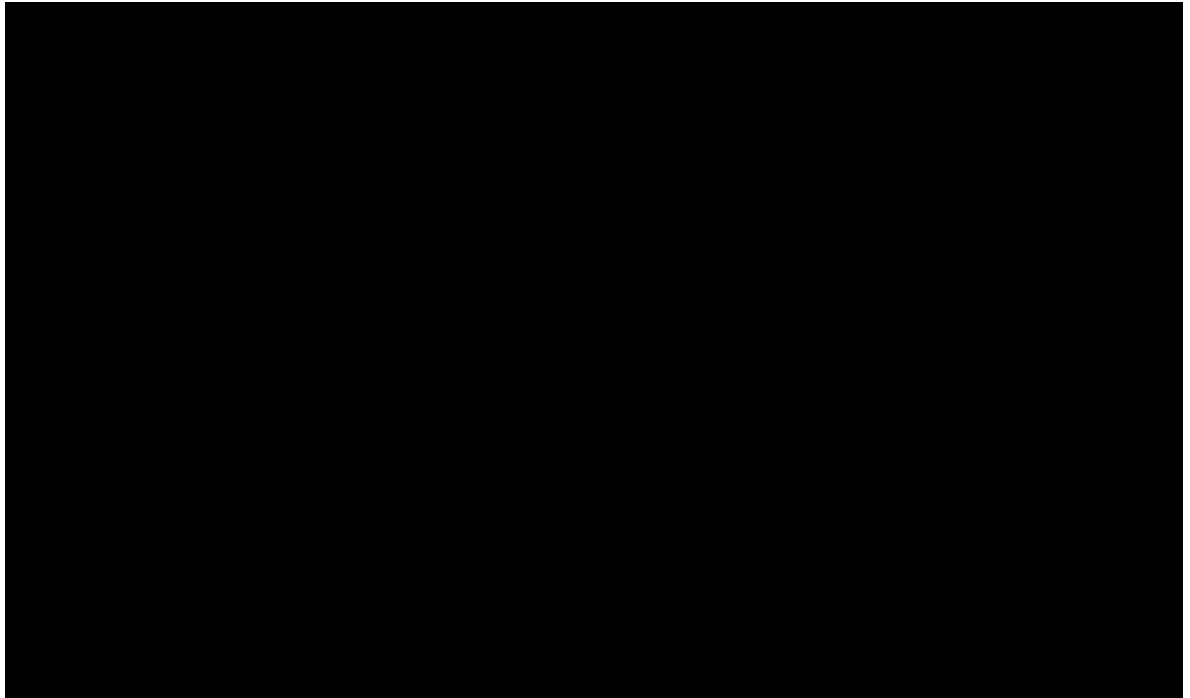
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10 Q. Okay. Let's talk a little bit about the
11 training that you got when you first joined CVS.

12 Did -- who provided you training? Was it
13 Aaron Burtner?

14 A. Aaron trained me, if you will, on the job.

15 Q. Okay. And was there any other kind of
16 training, any kind of videos, computer programs,
17 manuals you reviewed?

18 MR. CLARK: Objection to form.

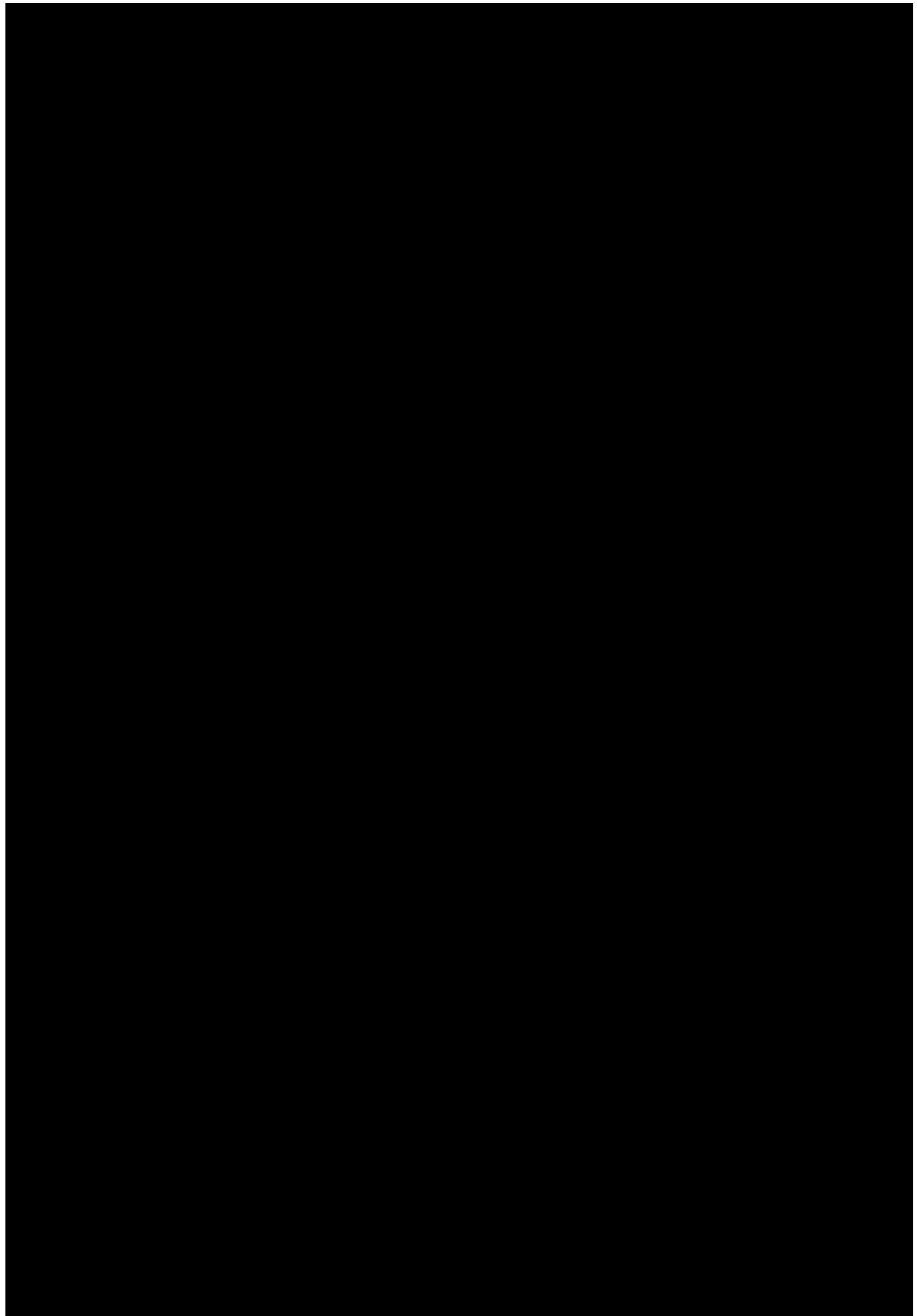
19 BY THE WITNESS:

20 A. I -- I know there was some -- the standard
21 safety. I don't remember what training I had. I
22 watched a lot of videos in the beginning, but so many
23 times, many different jobs, I'd -- I watch videos
24 about a job everywhere I go, you know, but yeah, there

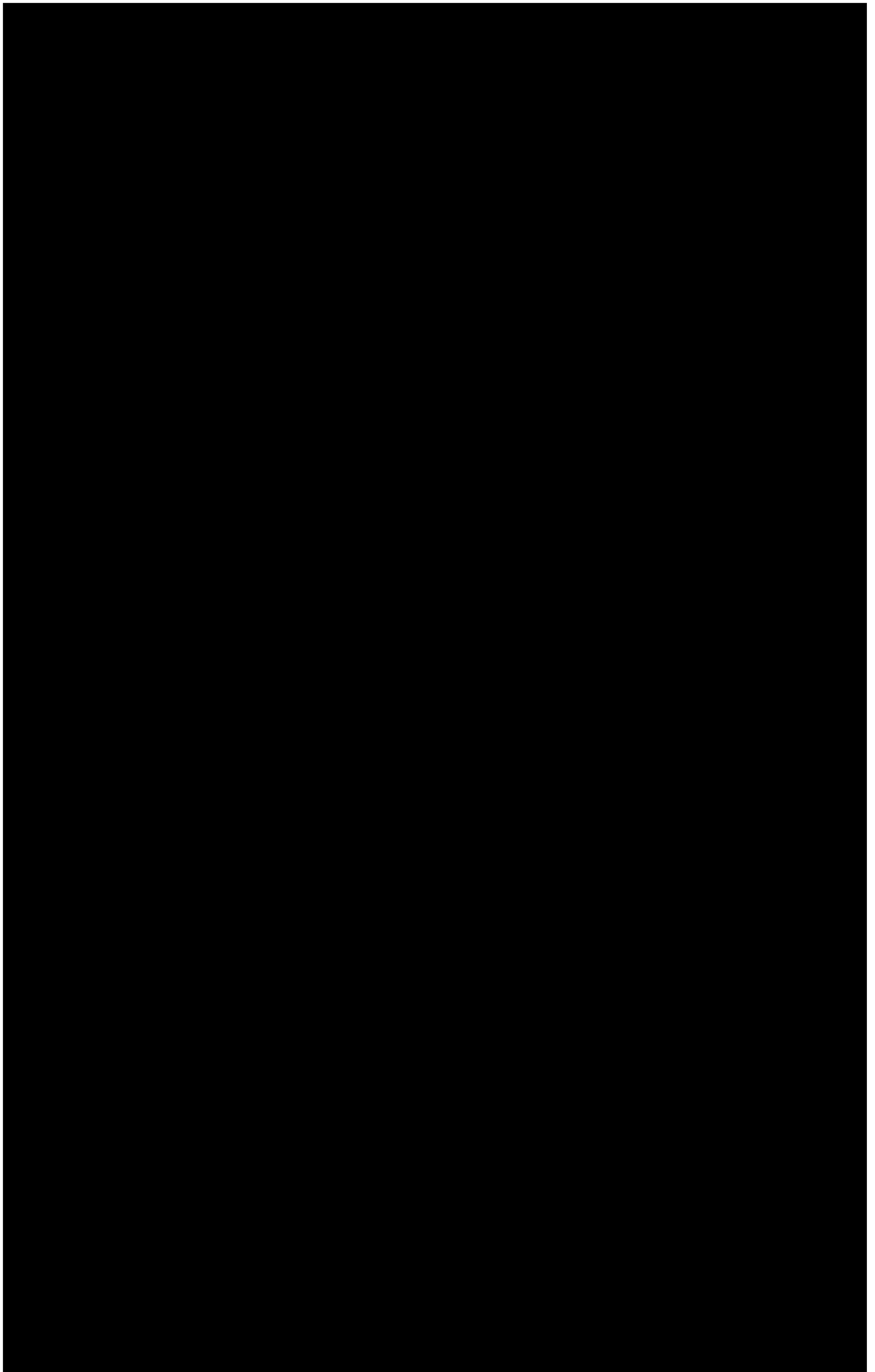
1 was.

2 BY MR. ELSNER:

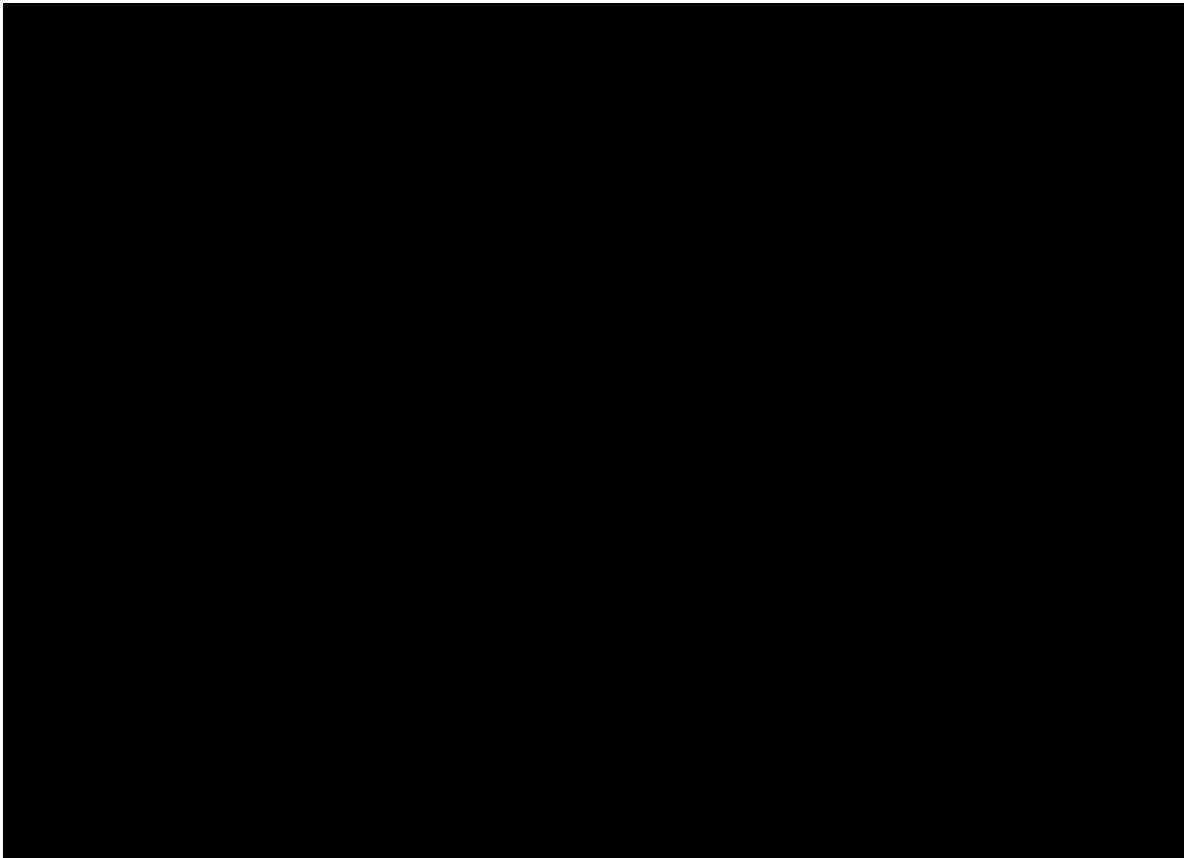
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Q. Did Aaron ever tell you that there was a -- a crisis in the United States or a public health concern in the United States about the misuse of prescription drugs?

A. At that time probably the only experience I had was the Rush Limbaugh.

Q. Tell me about that.

A. Remember Rush Limbaugh got busted for doing --

Q. For --

A. -- because he was addicted to prescription something.

Q. Oh, that's right.

1 A. Yeah.

2 Q. And so you followed that?

3 A. I knew -- well, I don't follow that.

4 Q. But you heard it?

5 A. I don't watch a lot of news, but, no, I
6 remembered it, you know.

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16 BY MR. ELSNER:

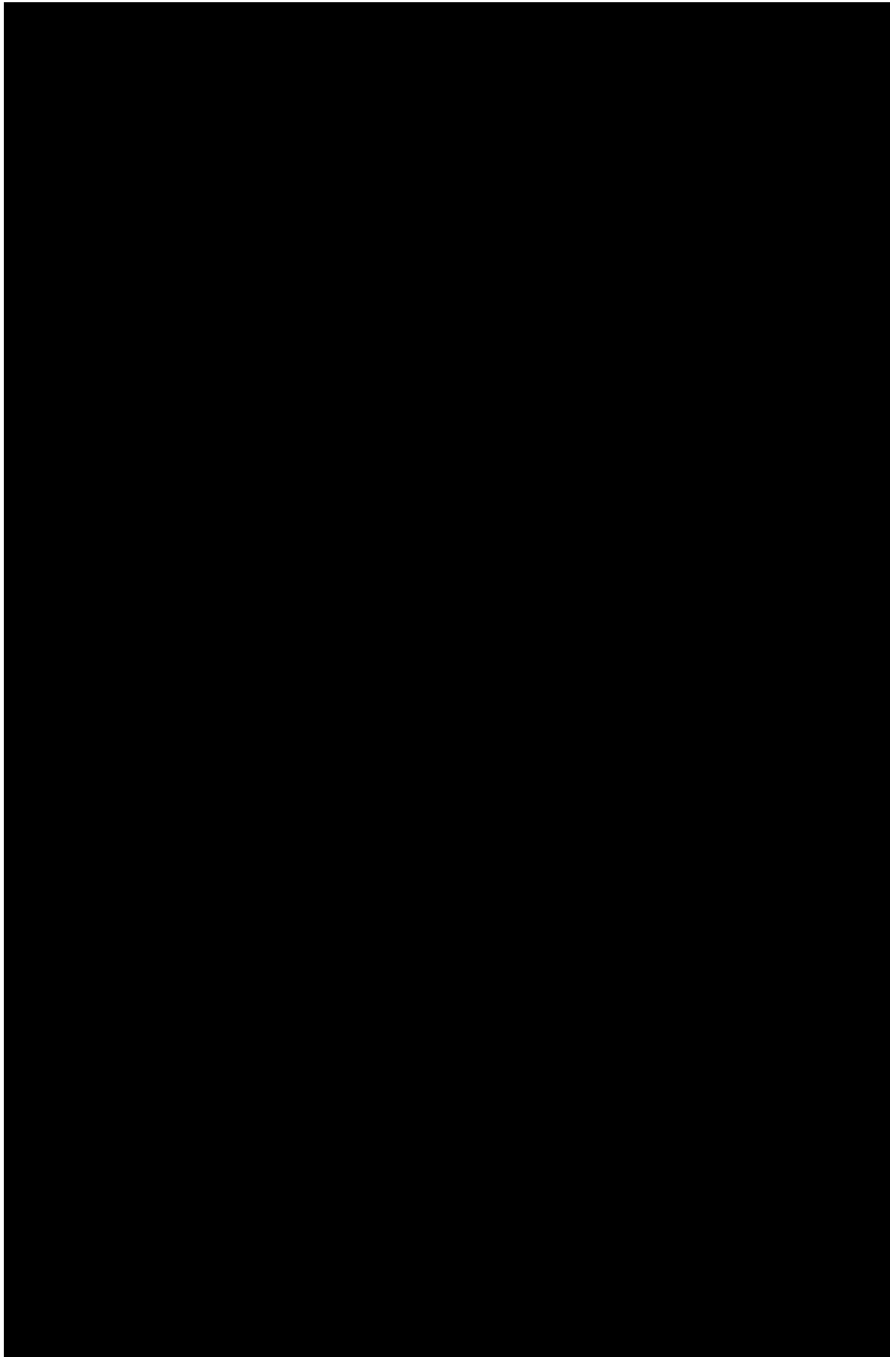
17 Q. Okay. Are you aware of whether there is
18 an opioid crisis in the United States?

19 A. I'm -- I don't pay attention to it. I
20 don't watch a lot of news. No, I'm kind of a hermit,
21 you know. I just -- until you guys come knocking on
22 my door, I was kind of blissfully ignorant, you know.

23 Q. Okay. What about when you were working at
24 CVS?

1 A. Well --

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(WHEREUPON, a certain document was

4

marked CVS - Elsner Deposition

5

Exhibit No. 3, for identification, as

6

of 01/24/2019.)

7

BY MR. ELSNER:

8

Q. I'm going to show you a letter that was

9

sent -- this is Exhibit 3.

10

This is a letter that was sent to CVS

11

Indiana.

12

Do you see that on the top left?

13

A. Yeah.

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16 Q. Okay.

17 MR. ELSNER: And can we see the second letter.

18 (WHEREUPON, a certain document was
19 marked CVS - Elsner Deposition
20 Exhibit No. 4, for identification, as
21 of 01/24/2019.)

22 BY MR. ELSNER:

23 Q. Mr. Kelly, this is Exhibit 4. This is
24 a -- another letter from the DEA a year later,

1 December of 2007.

2 And if you look in the middle of the
3 second paragraph.

4 A. Okay.

5 Q. They cite to a code section. And then
6 they say it:

7 "Specifically requires that a registrant
8 design..." -- and on the screen they are going to
9 highlight that for you.

10 A. Yeah.

11 Q. -- "...and operate a system to disclose to
12 the registrant suspicious orders of controlled
13 substances."

14 And then if you go down to the next
15 paragraph. Or, sorry, the -- the one on the bottom of
16 the page. It says:

17 "The regulation specifically states that a
18 suspicious order includes orders of an unusual size,
19 orders deviating substantially from a normal pattern,
20 and orders of an unusual frequency."

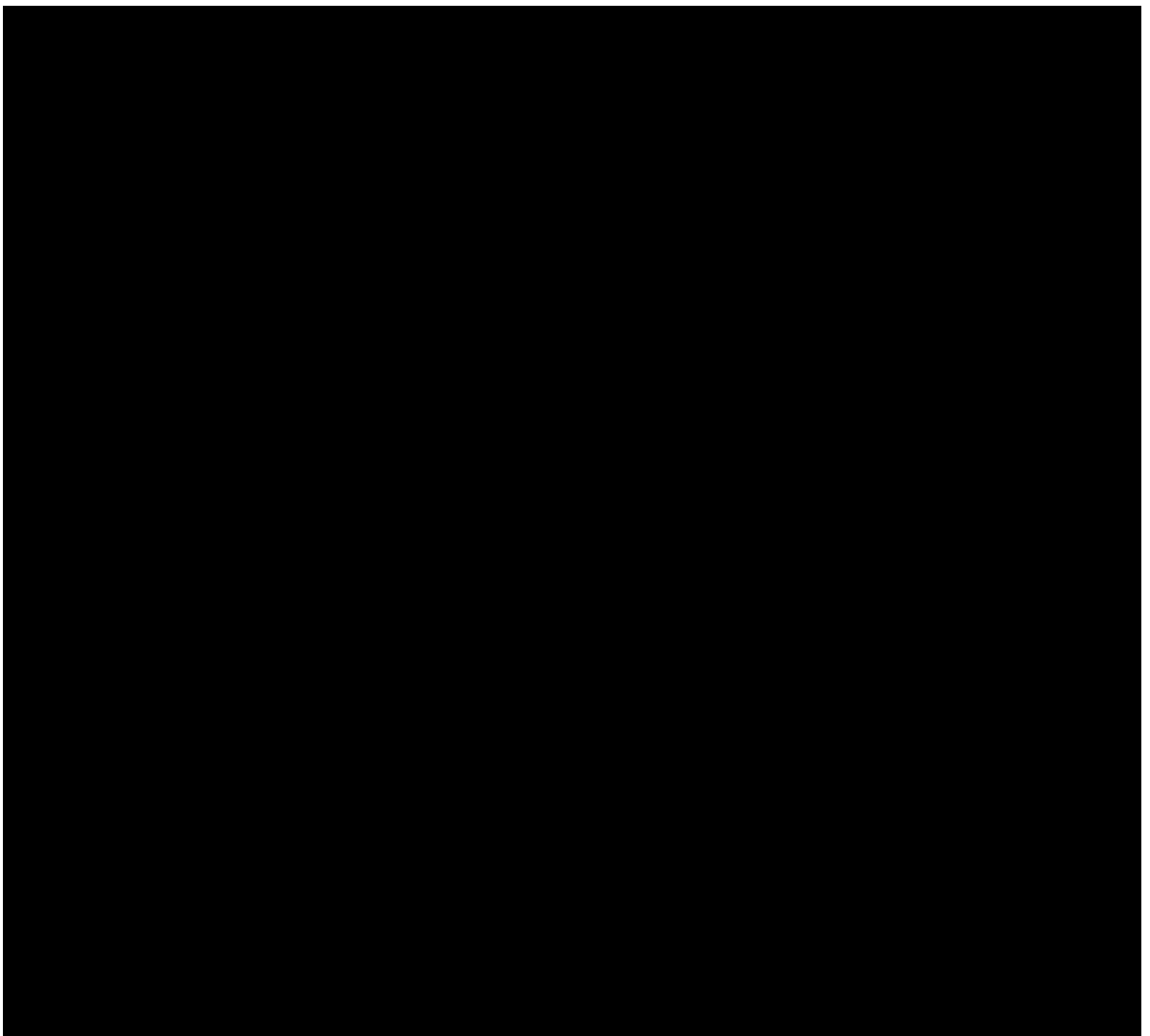
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15 BY MR. ELSNER:

16 Q. Okay.

17 A. I looked -- a lot of my other jobs I look
18 a lot of ITAR stuff, so.

19 MR. ELSNER: Okay. Let's look at Exhibit 299.

20 (WHEREUPON, a certain document was
21 marked CVS - Elsner Deposition
22 Exhibit No. 5, for identification, as
23 of 01/24/2019.)

24 BY MR. ELSNER:

1 Q. Mr. Kelly, this is Exhibit 5.

2 A. A lot of dead trees.

3 Q. This is an e-mail to you from Matt Murphy?

4 A. Matthew, yep.

5 Q. It is actually to Shauna Helfrich.

6 Who is she?

7 A. Shauna was the other analyst that worked
8 under Aaron.

9 Q. Okay. And you're cc'd on this e-mail --
10 DEFENSE COUNSEL: Is there a Bates number for
11 Exhibit 5?

12 MR. ELSNER: Yes. 98 -- it is CVS-MDLT1 9821
13 through 9847.

14 BY MR. ELSNER:

15 Q. And who is Matt Murphy?

16 A. Well, he is vice president of Pharma --
17 Pharma Compliance Group.

18 Q. And who is -- and who is that?

19 A. Well, he was the consultant that came in
20 for -- for -- for -- he was a -- a former FDA
21 investigator, I believe? Or something. He was an
22 agent for the F --

23 Q. Okay. And he -- was he --

24 A. -- or DEA, one of the two, yeah.

1 Q. And so did he have his own company and --
2 and did CVS hire that company?

3 He wasn't an employee of CVS, right?

4 A. No, no.

5 MR. CLARK: Object to form.

6 BY THE WITNESS:

7 A. He came in to consult for us. I think
8 that -- that was, like, for -- when Aaron left the
9 company.

10 BY MR. ELSNER:

11 Q. After Aaron left, he was one of the people
12 they brought in to help out?

13 A. Yeah, that's right.

14 Q. Okay.

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21 Q. Were you aware when you were working at
22 CVS that -- that there was an epidemic facing the
23 country and that -- and that pharmacies could be a
24 part of that epidemic in distributing controlled drugs

1 to people who shouldn't have them?

2 MR. CLARK: Object to the form.

3 BY THE WITNESS:

4 A. I don't know anything about an epidemic.

5 I don't know what the cause of that or -- or what the
6 problem was. I knew it was a problem, but, I think,
7 yeah.

8 BY MR. ELSNER:

9 Q. Okay.

10 A. But as far as an epidemic, I don't. I
11 can't quantify that.

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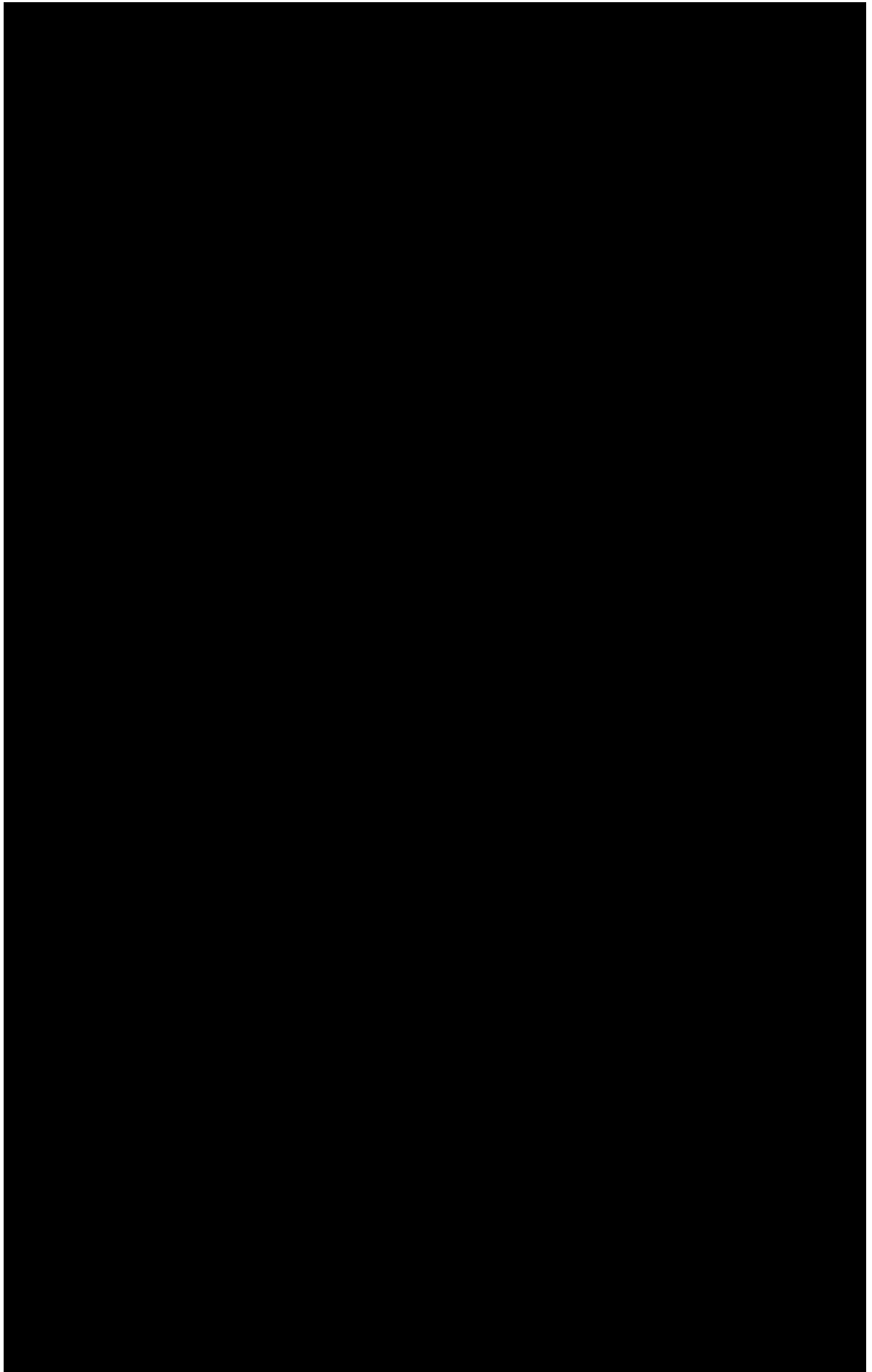
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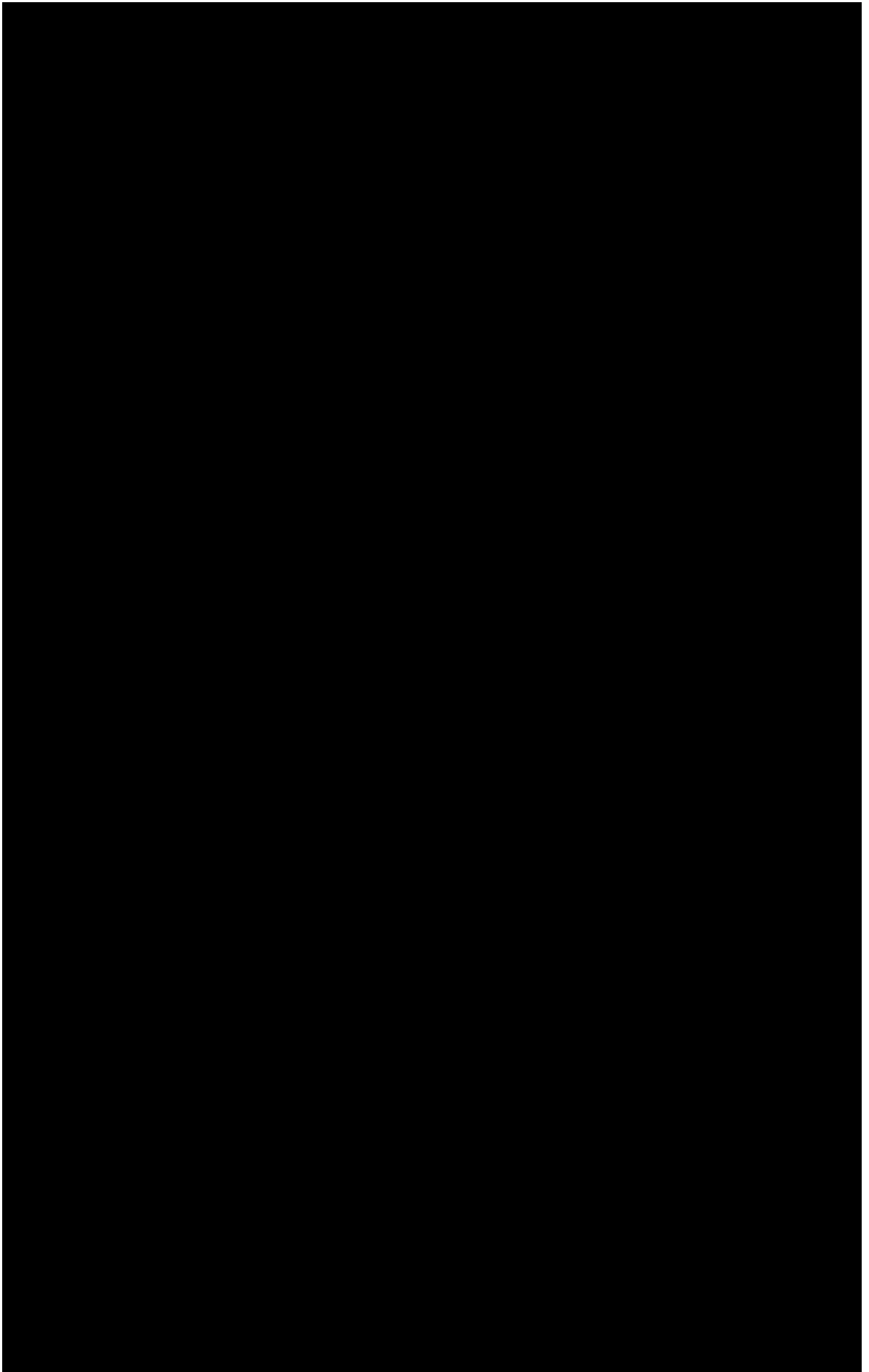
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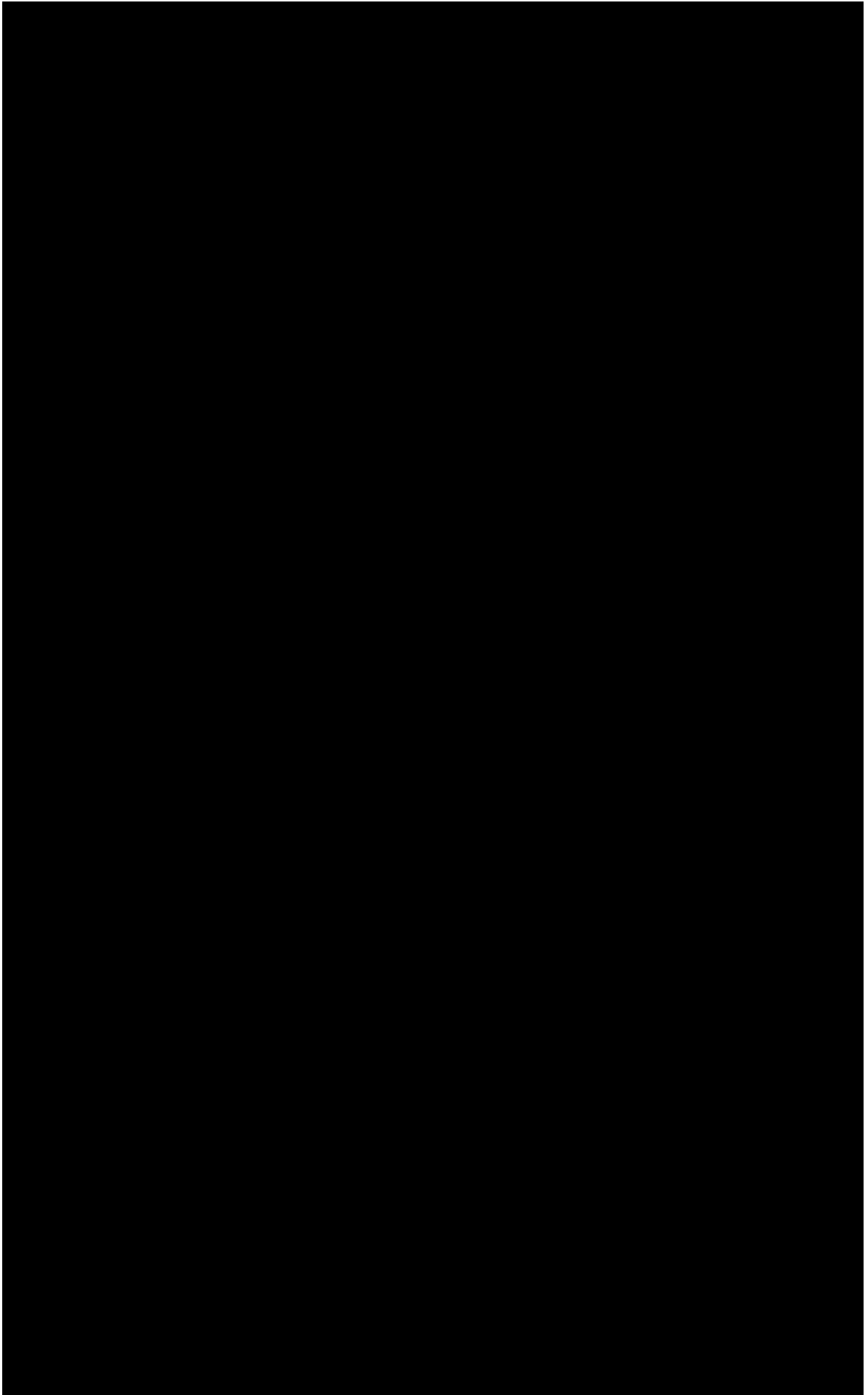
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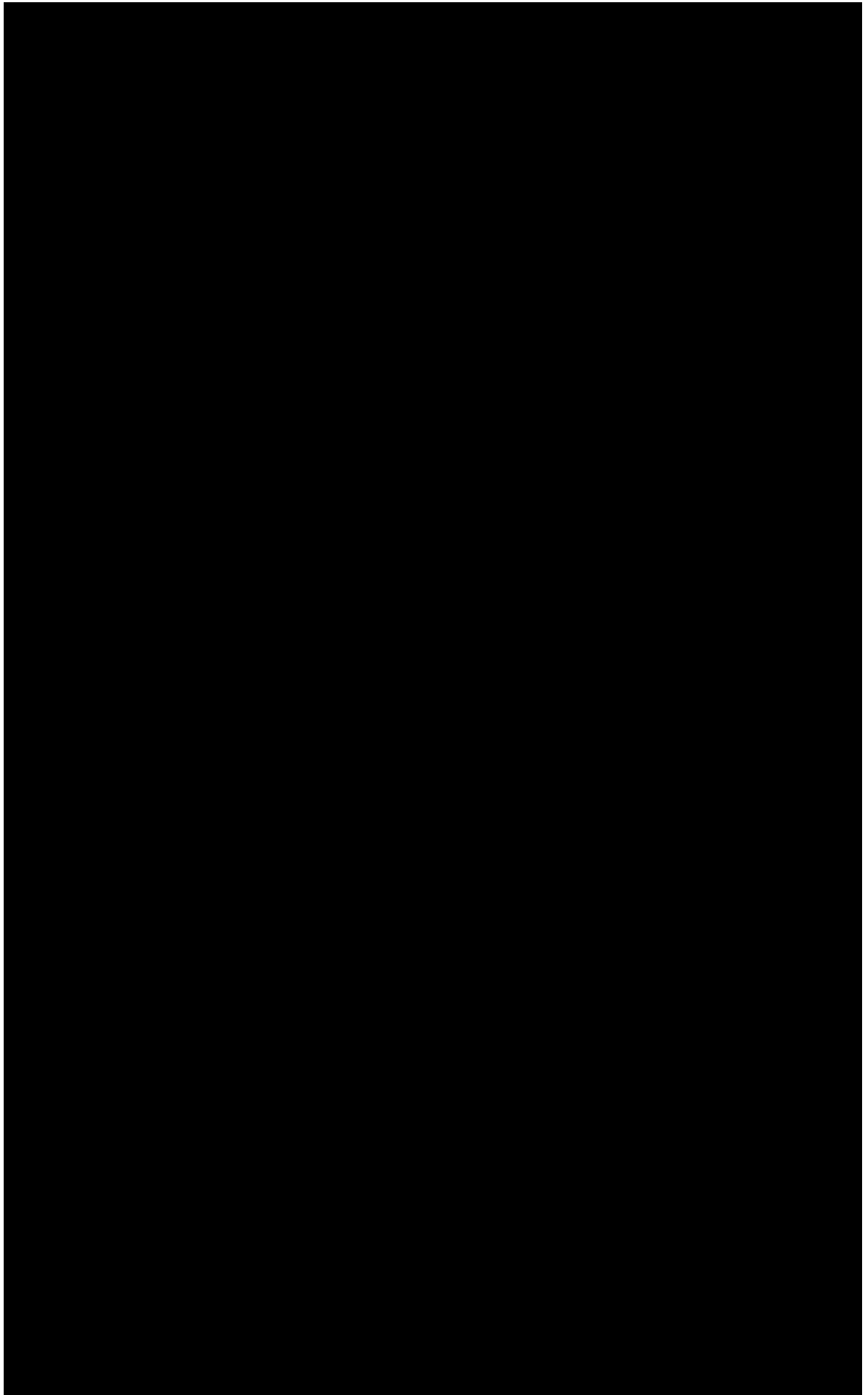
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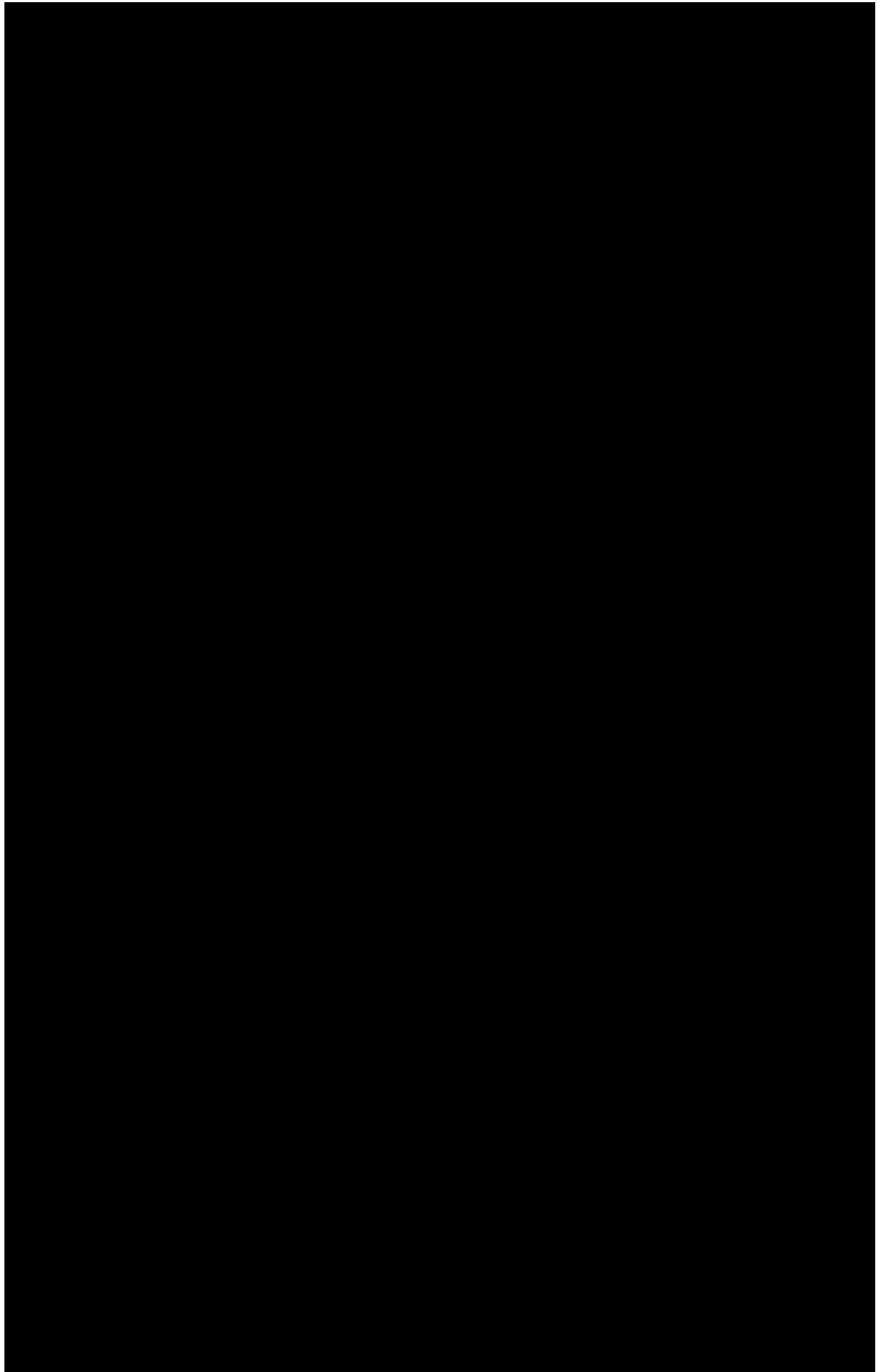
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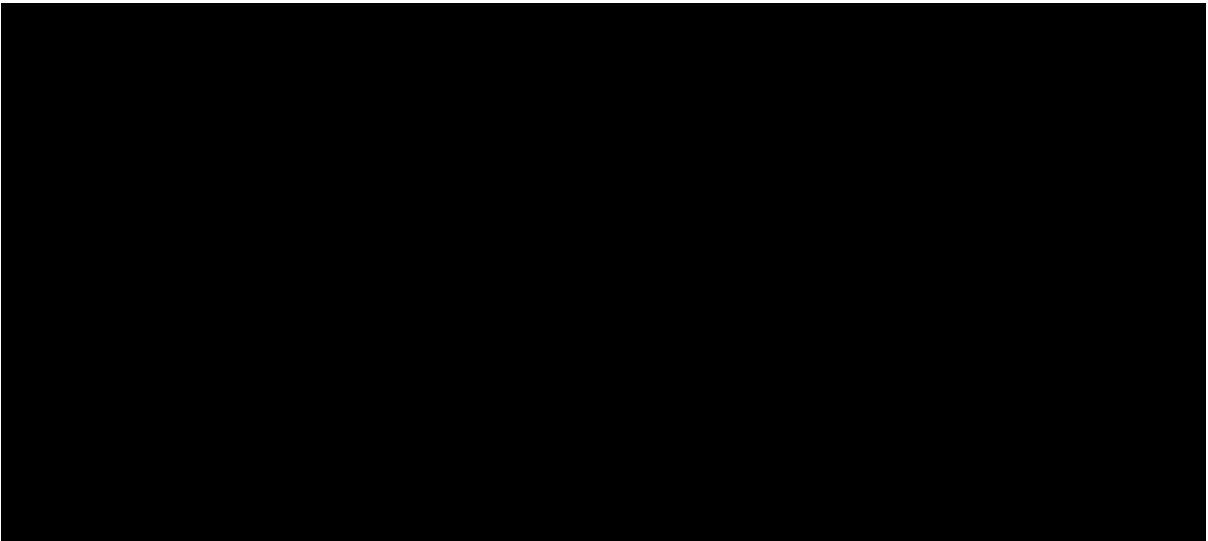
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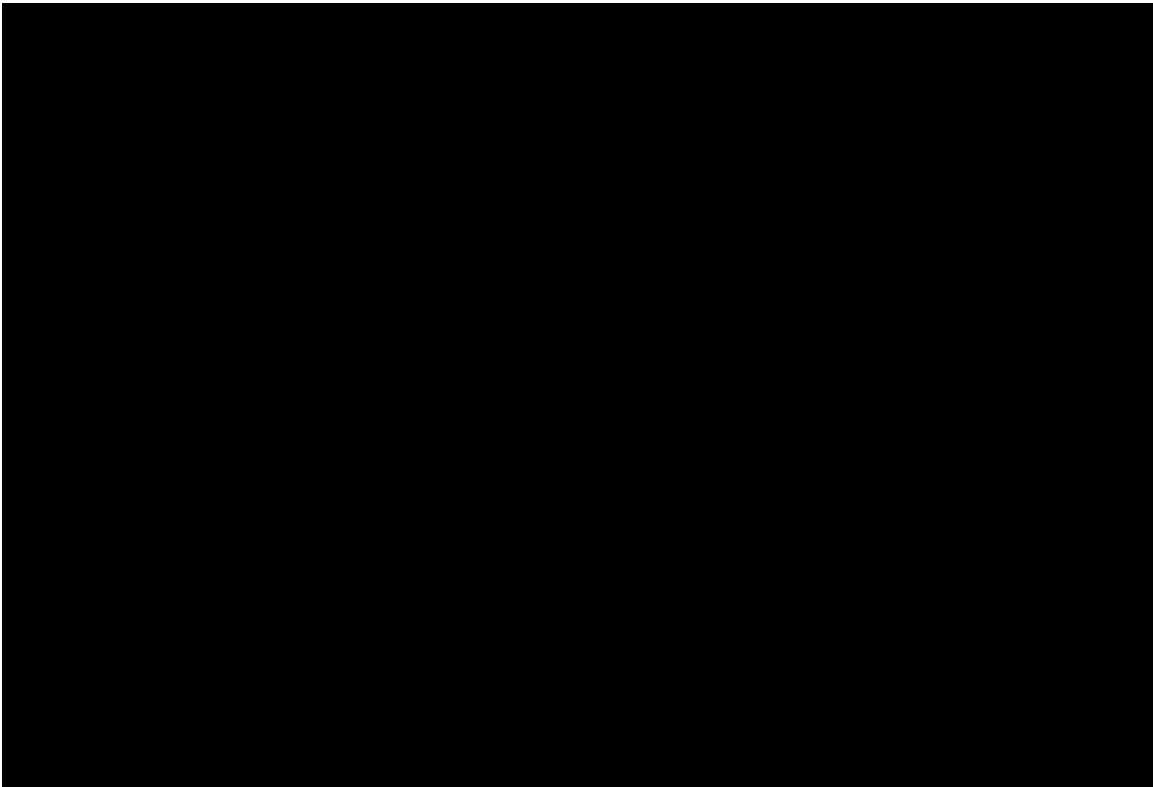
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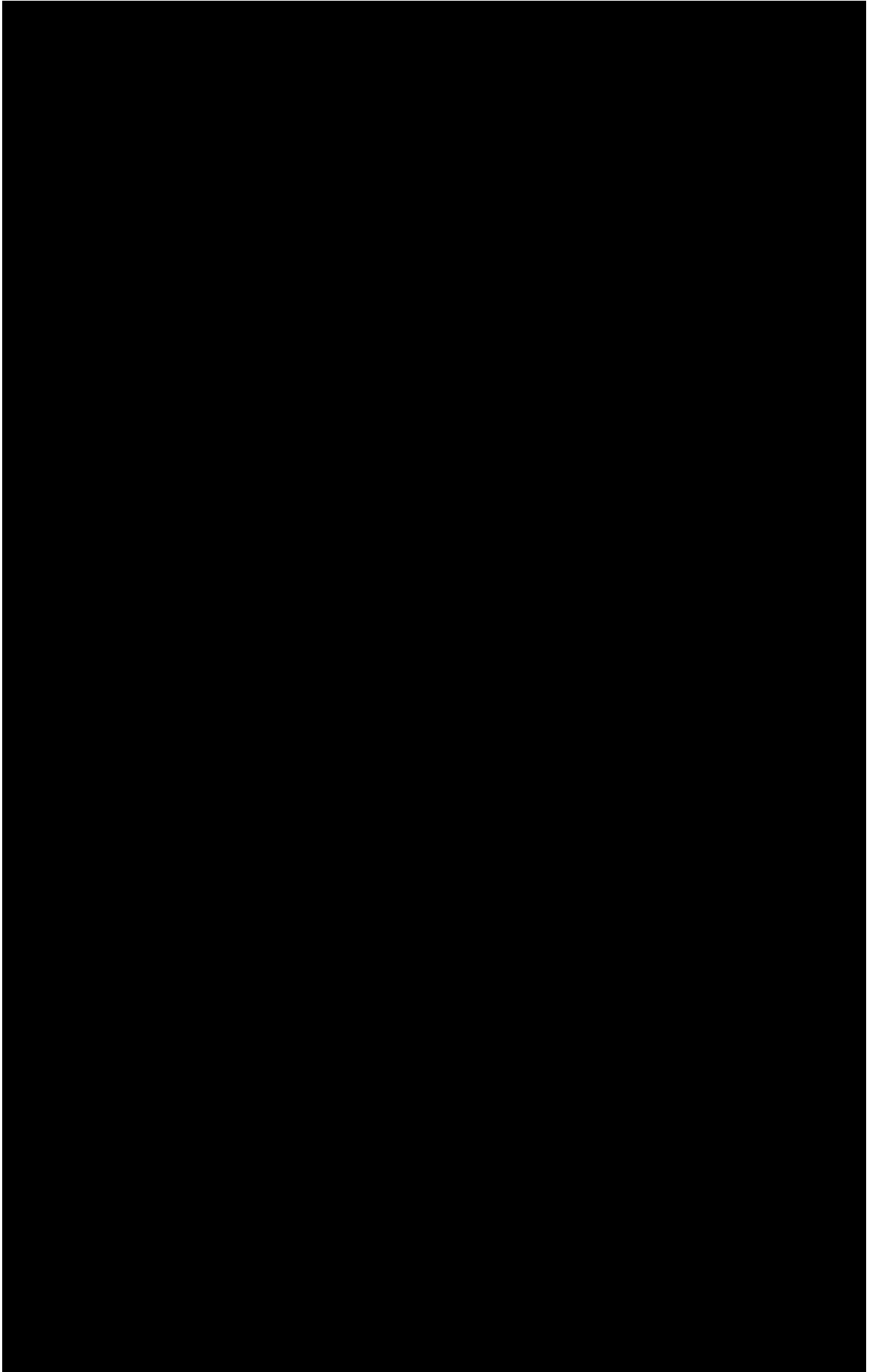
MR. ELSNER: I want to -- I want to take a look
at MR 318.

(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 6, for identification, as
of 01/24/2019.)

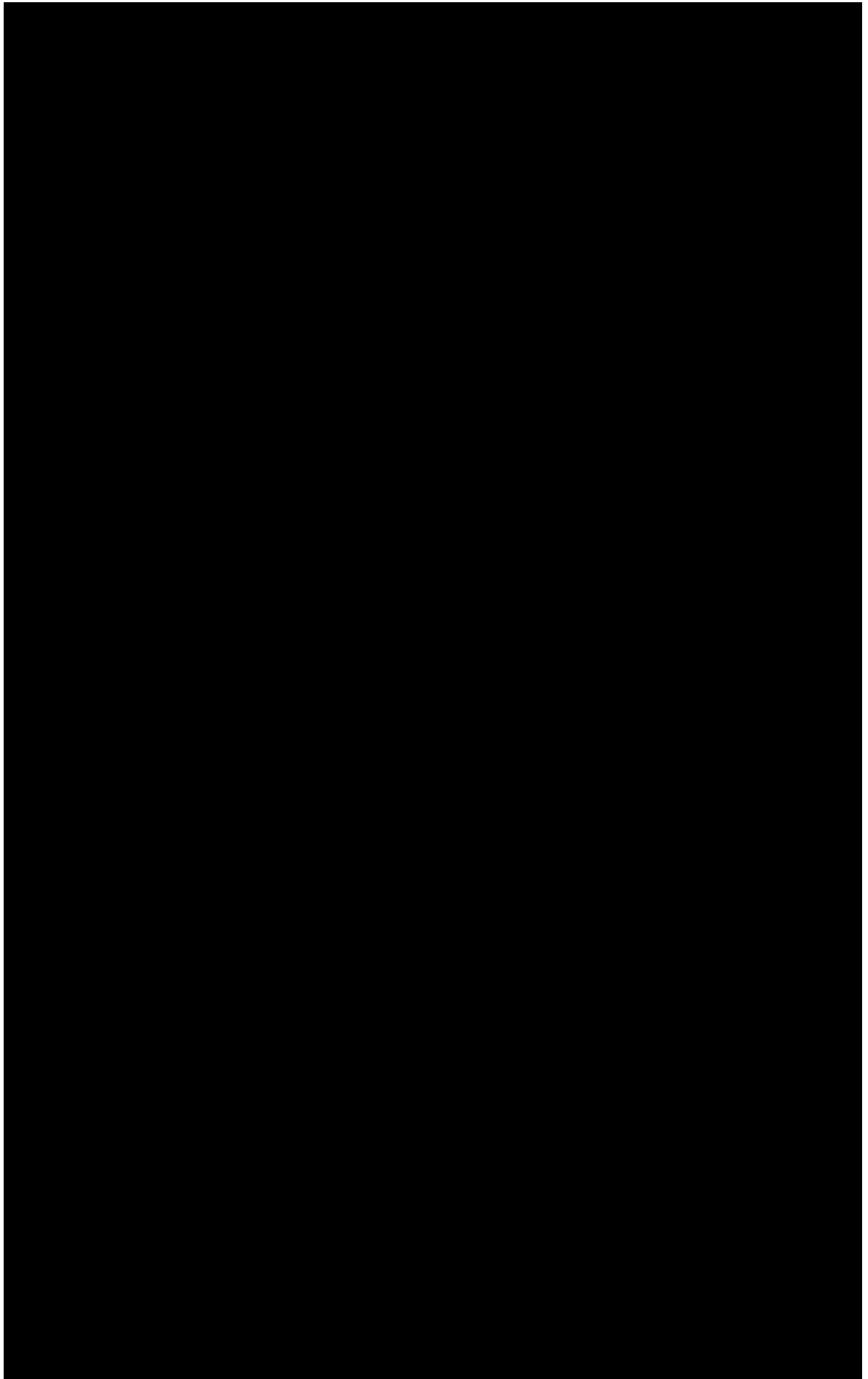
BY MR. ELSNER:



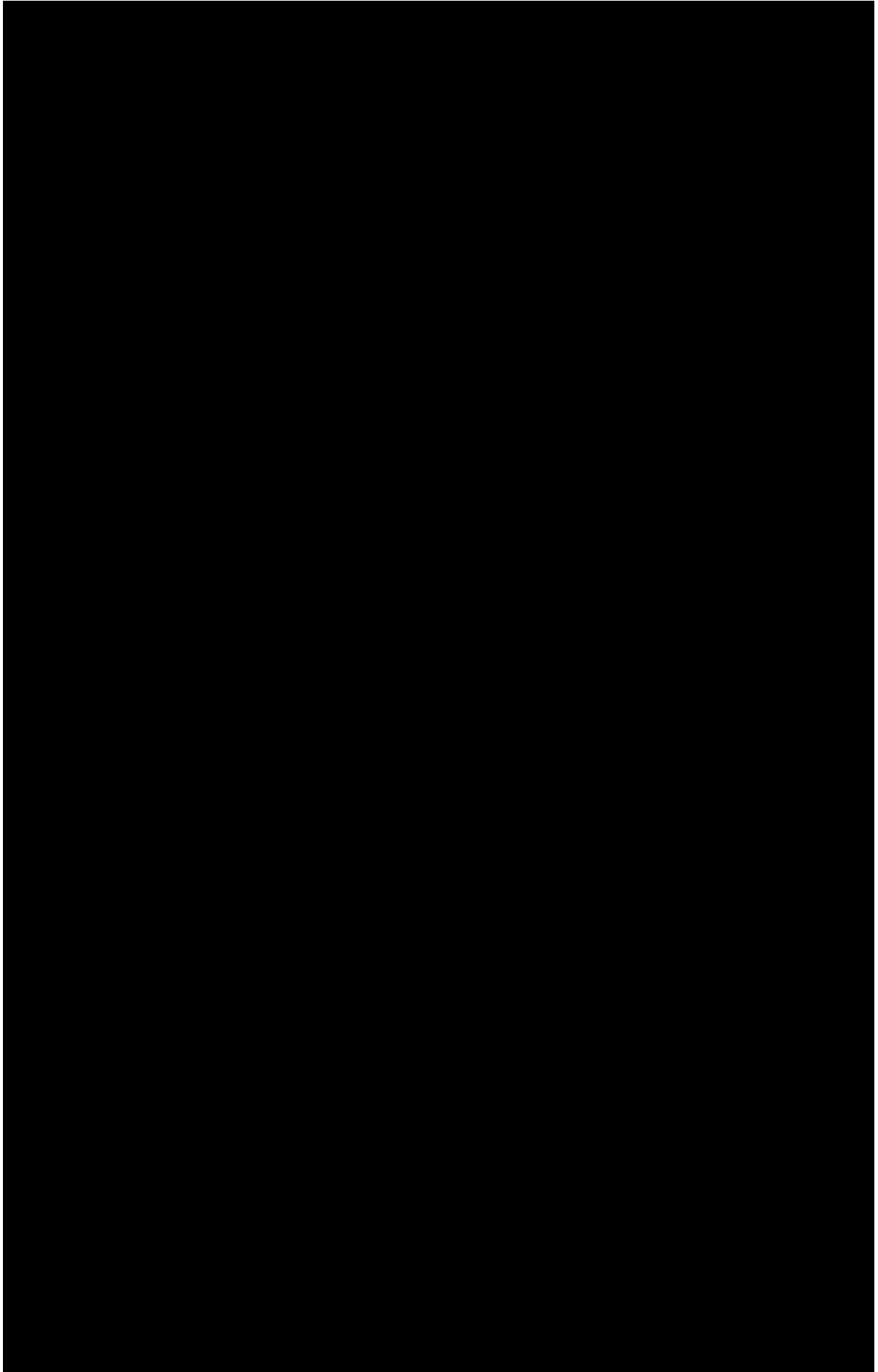
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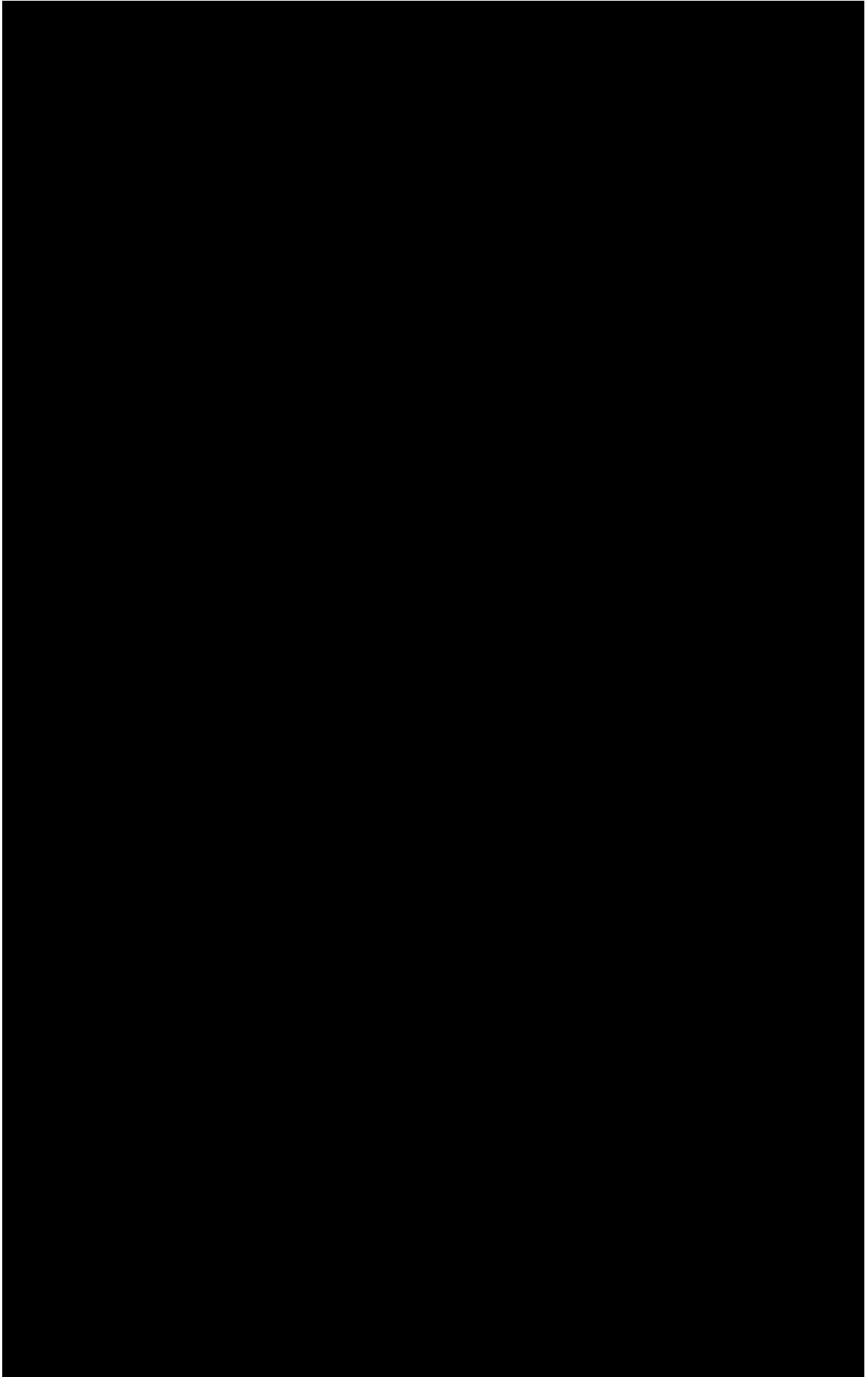
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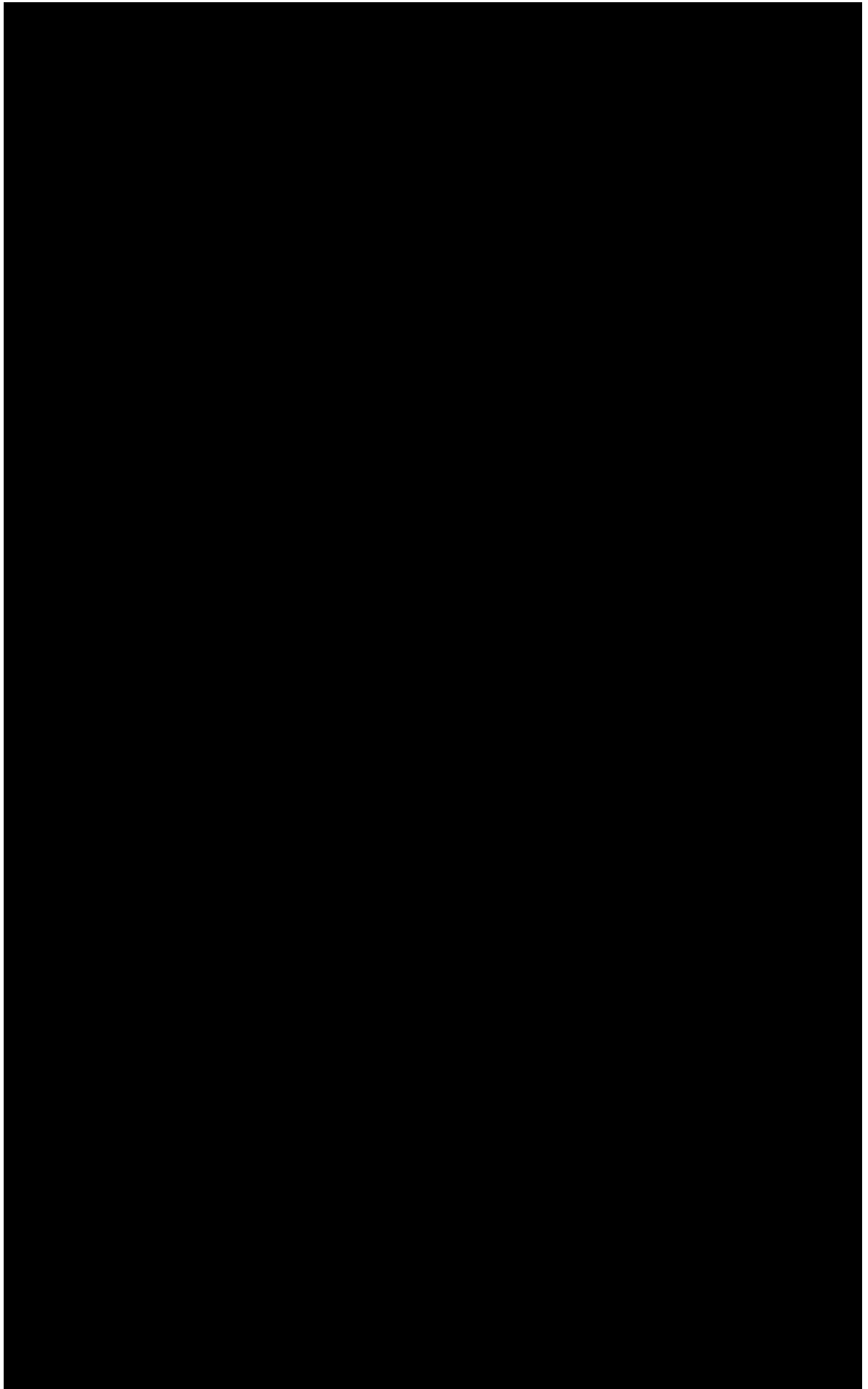
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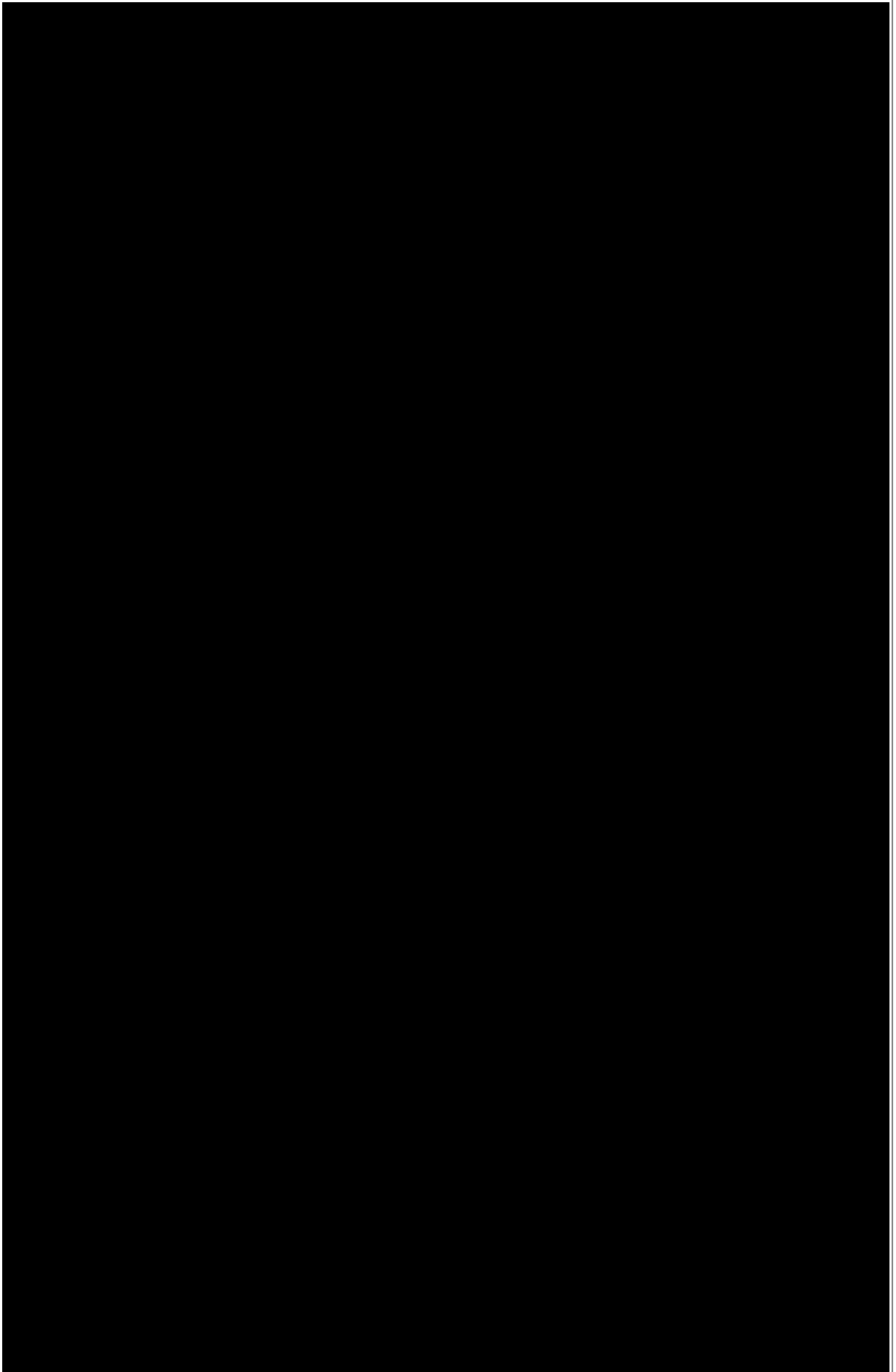
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18 Q. Let me --

19 MR. CLARK: I'm sorry, if you are moving on,
20 Mike, and is now a good time? We've been on for
21 almost an hour.

22 MR. ELSNER: Okay. We can a break.

23 MR. CLARK: Is that okay?

24 MR. ELSNER: Yeah, that's fine.

1 THE WITNESS: Yeah, I've kind of got -- my hot
2 chocolate is going through me.

3 THE VIDEOGRAPHER: We are off the record at
4 9:58 a.m.

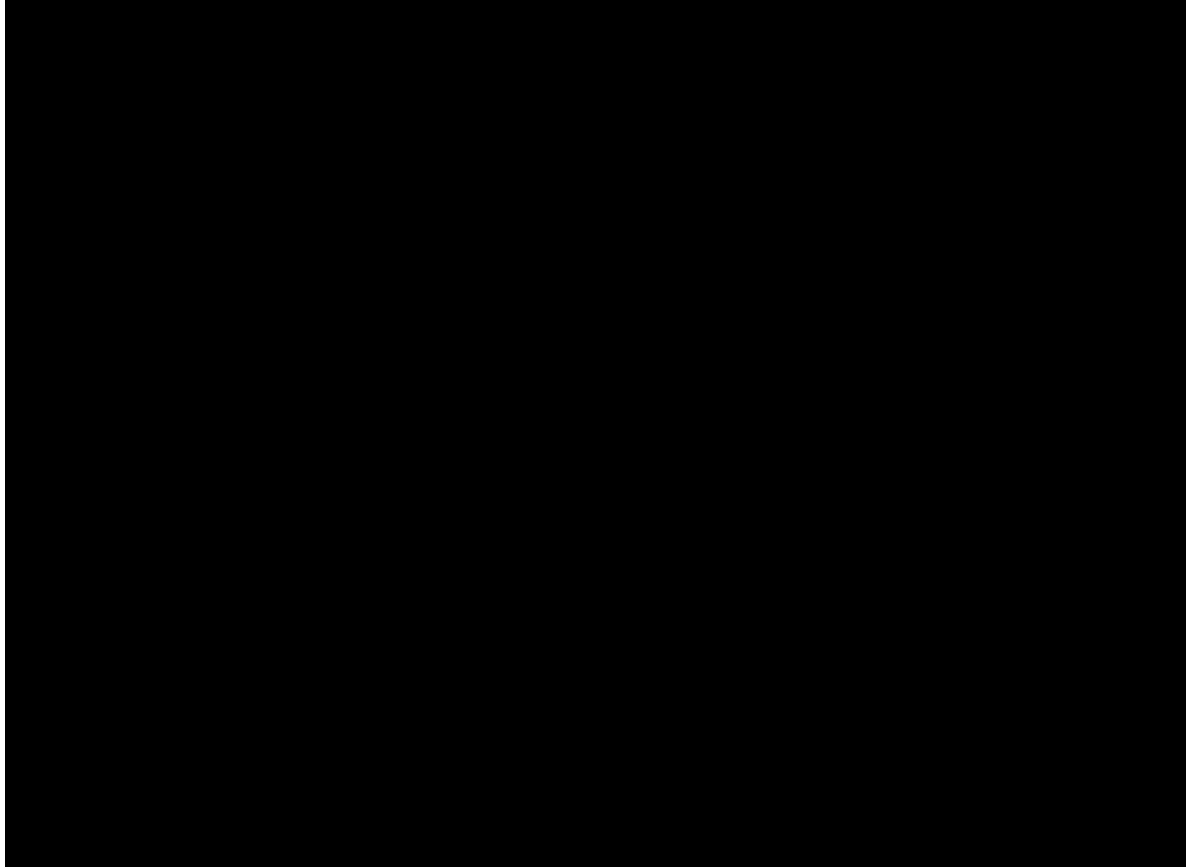
5 (WHEREUPON, a recess was had
6 from 9:58 to 10:09 a.m.)

7 THE VIDEOGRAPHER: We are back on the record at
8 10:09 a.m.

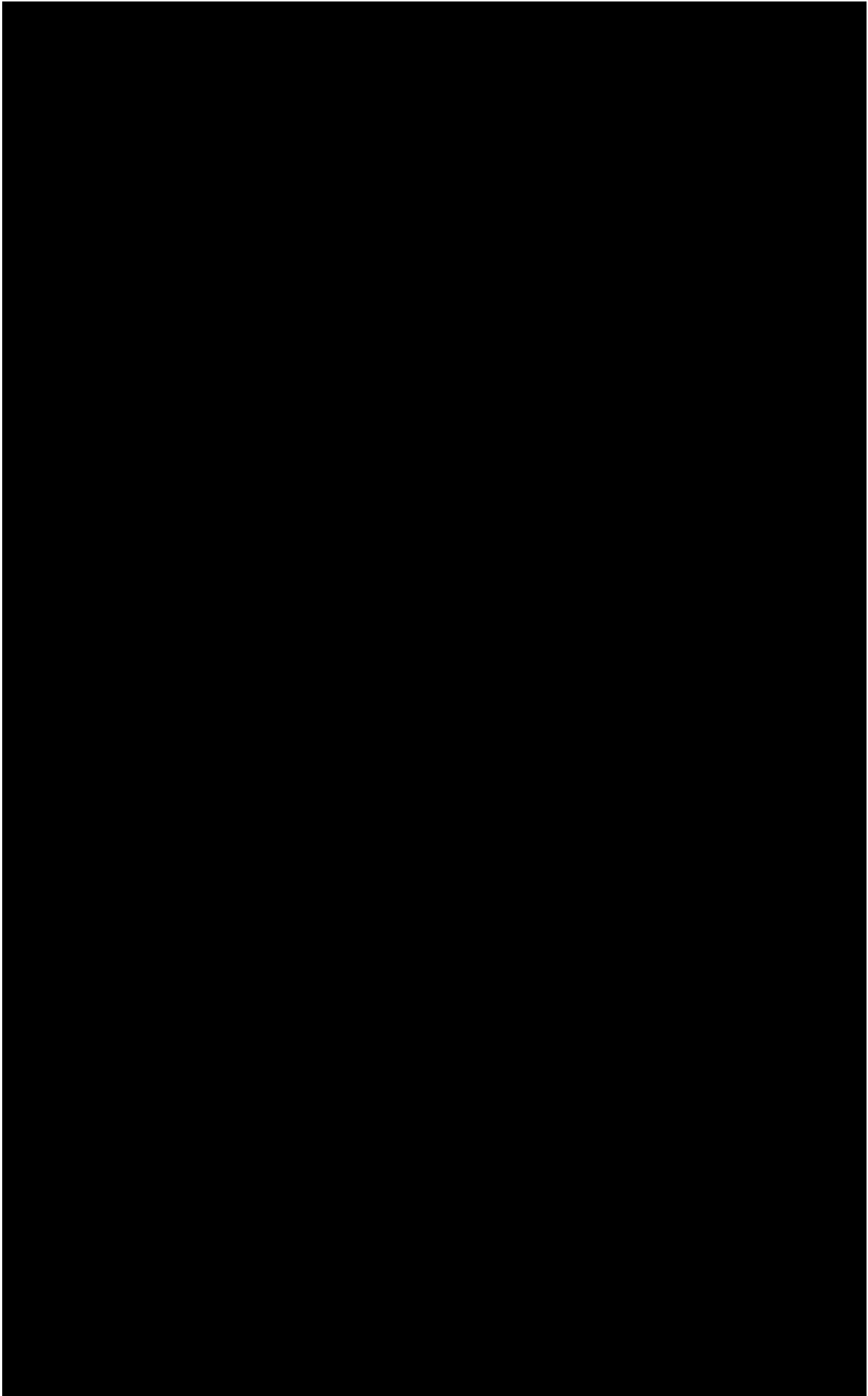
9 (WHEREUPON, a certain document was
10 marked CVS - Elsner Deposition
11 Exhibit No. 7, for identification, as
12 of 01/24/2019.)

13 BY MR. ELSNER:

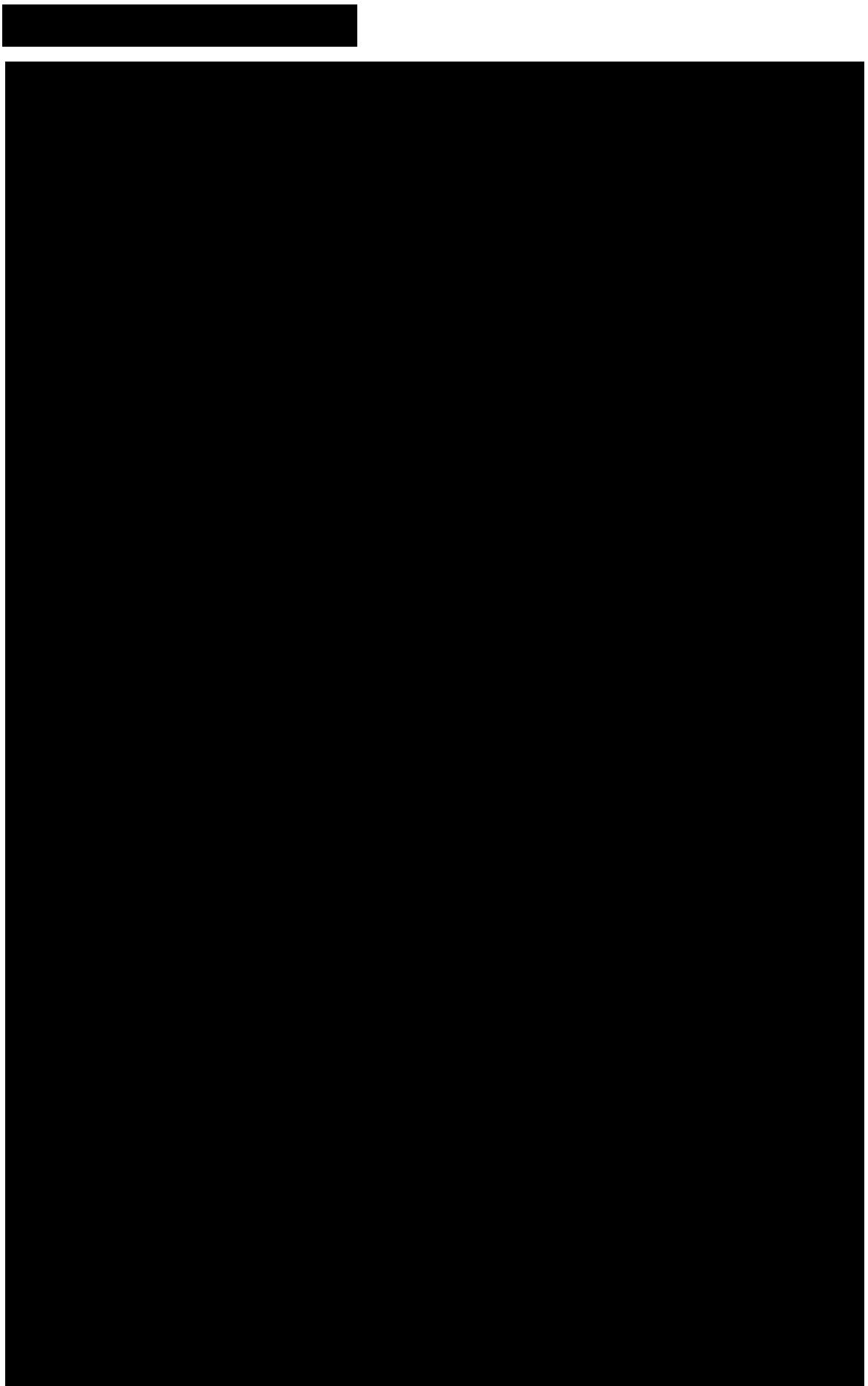
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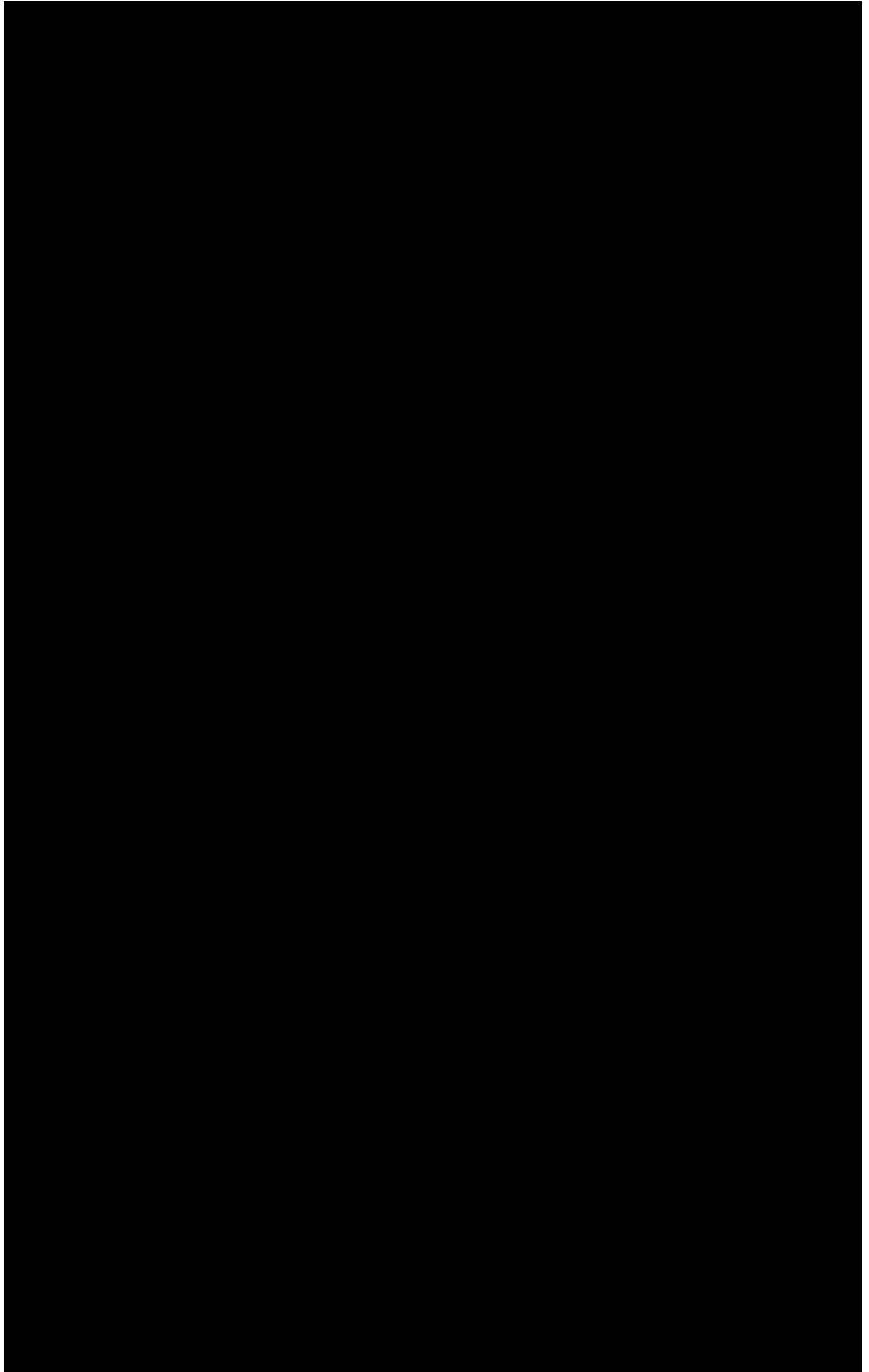
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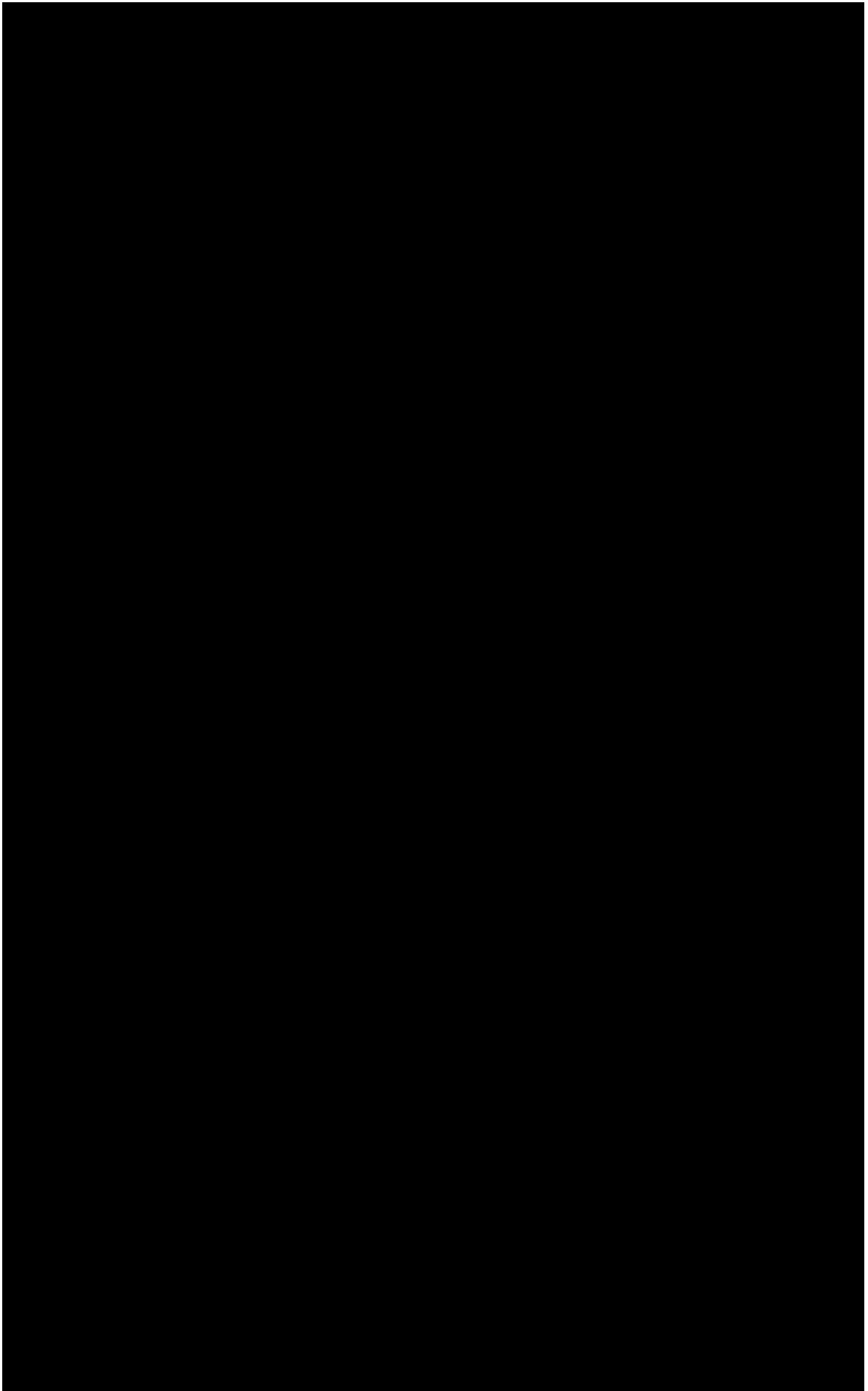
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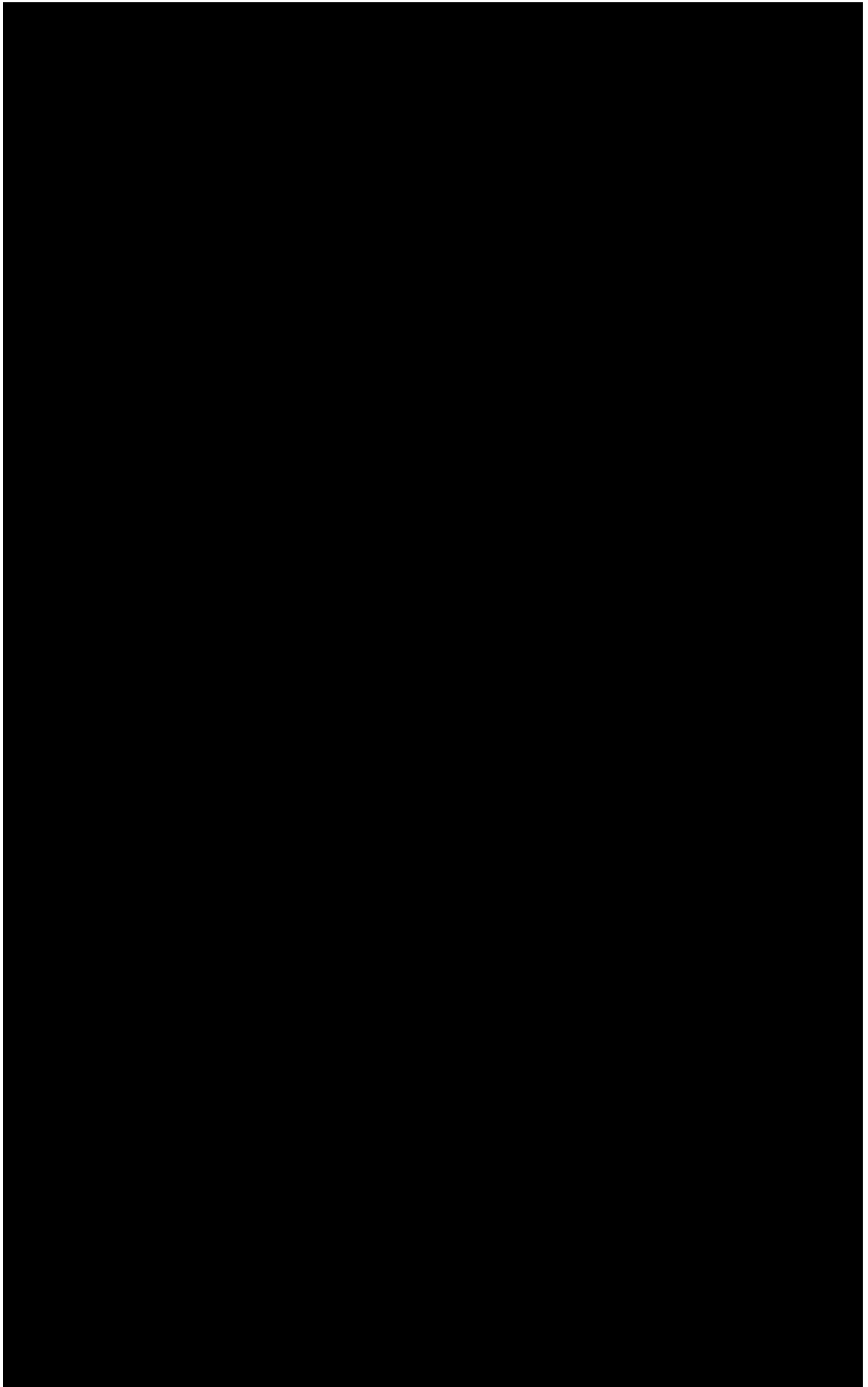
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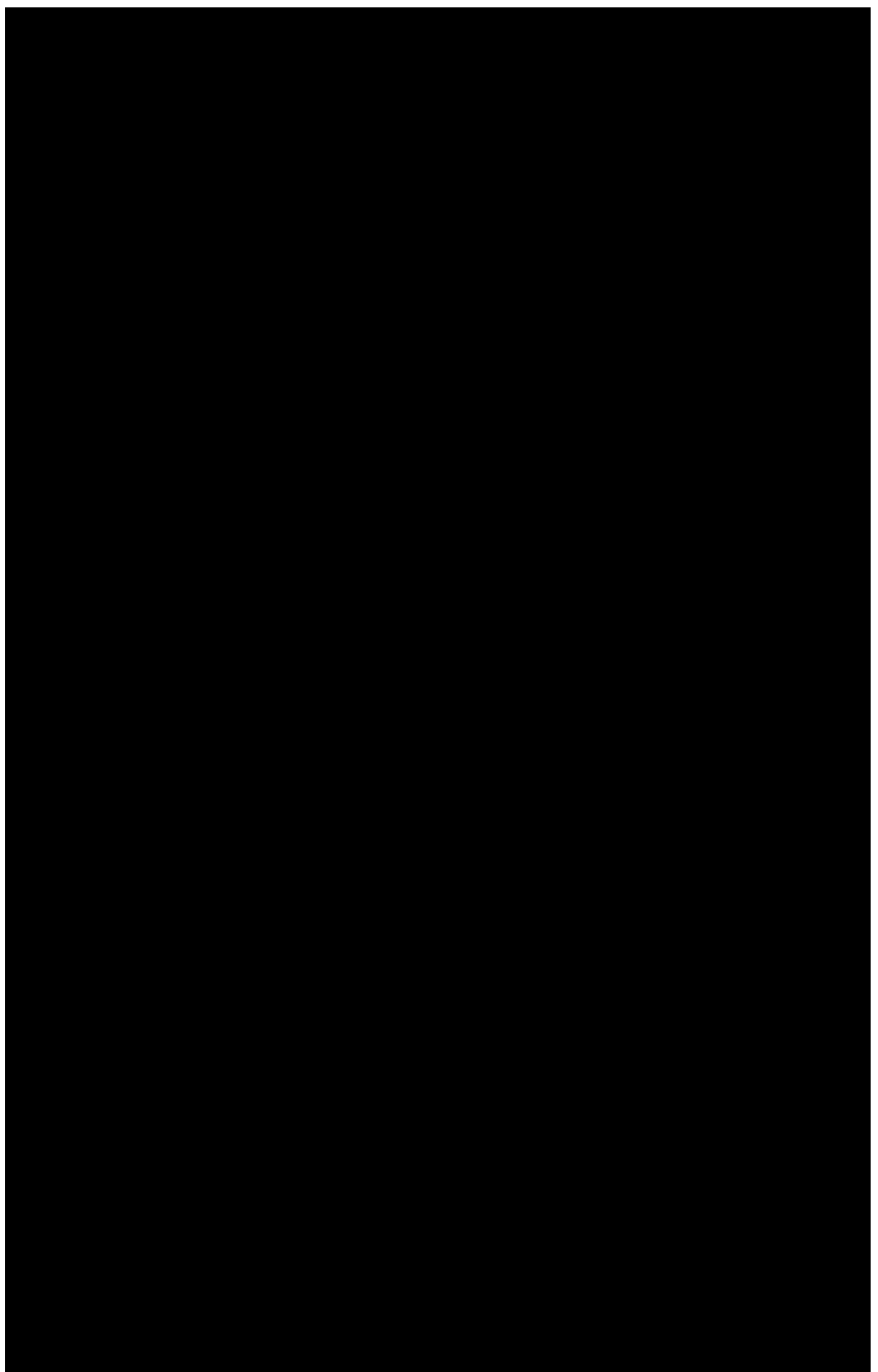
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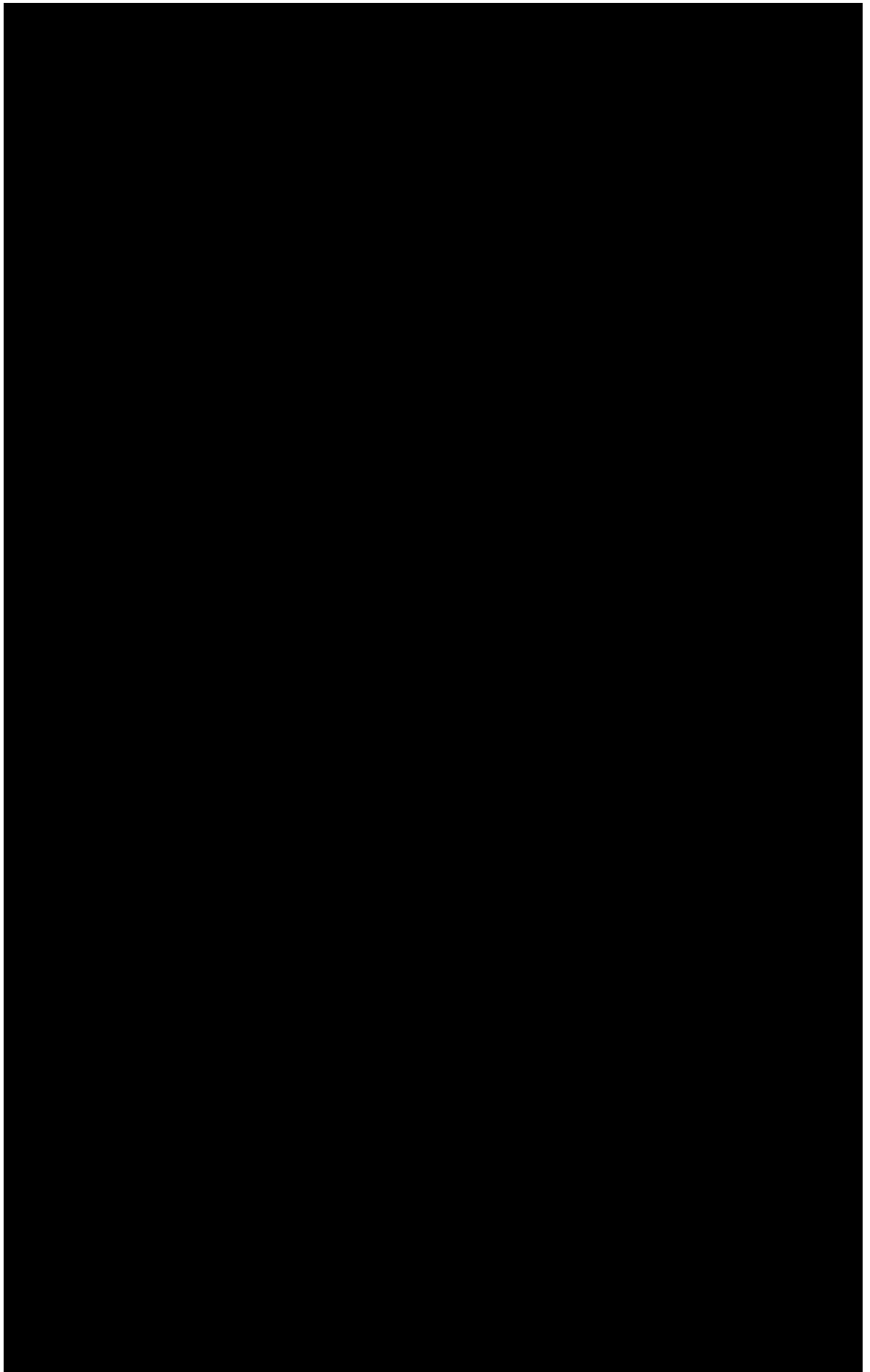
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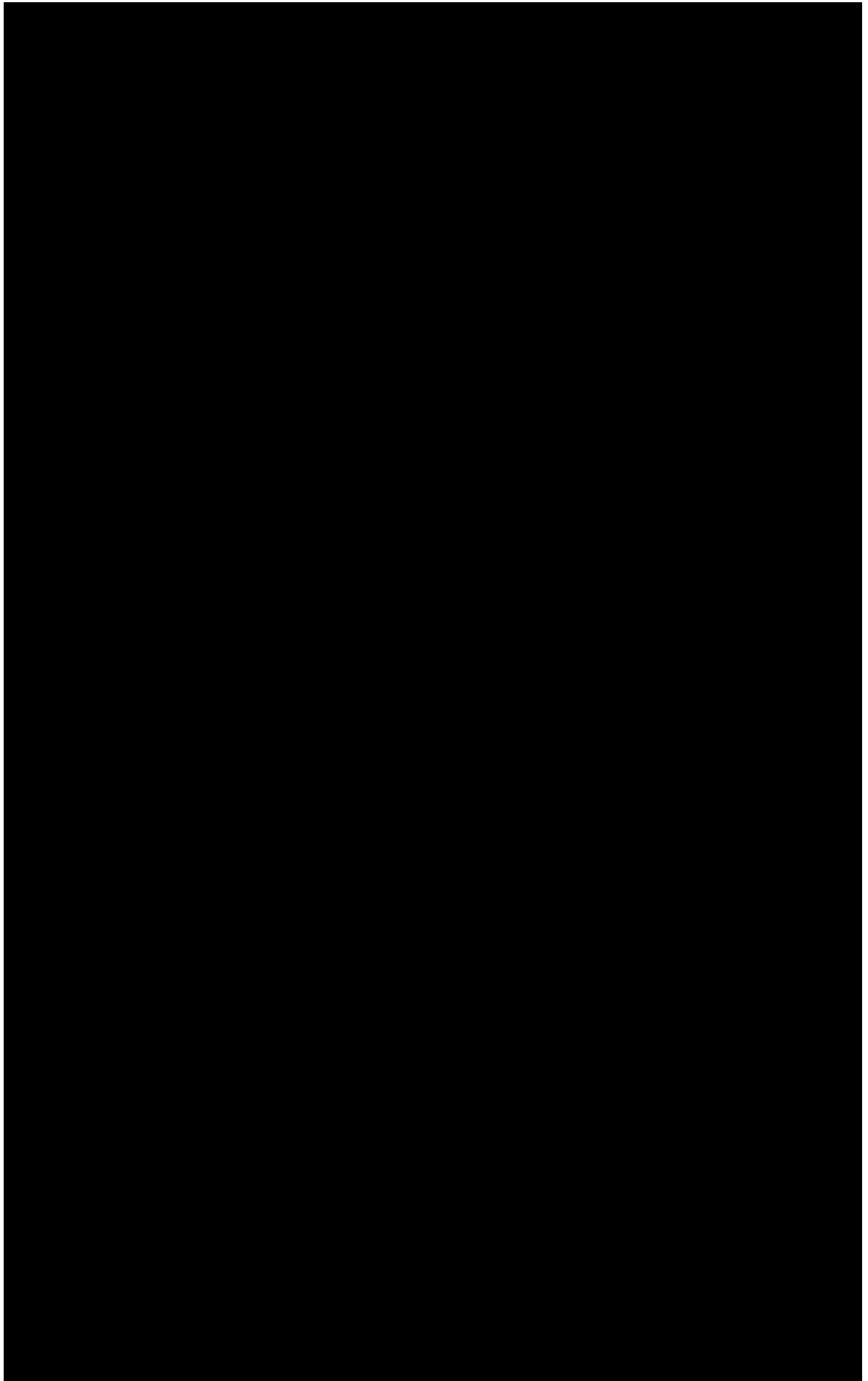
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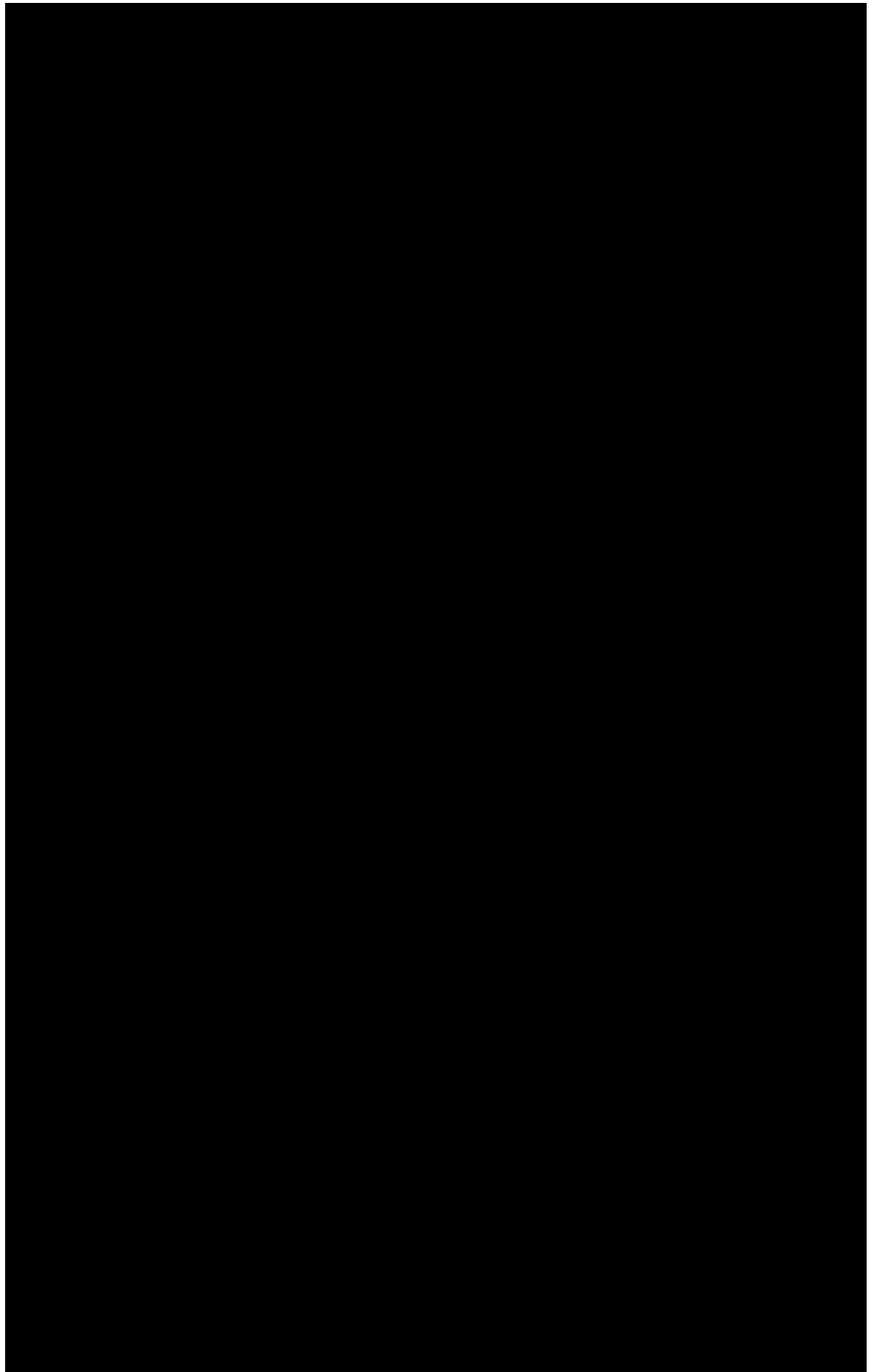
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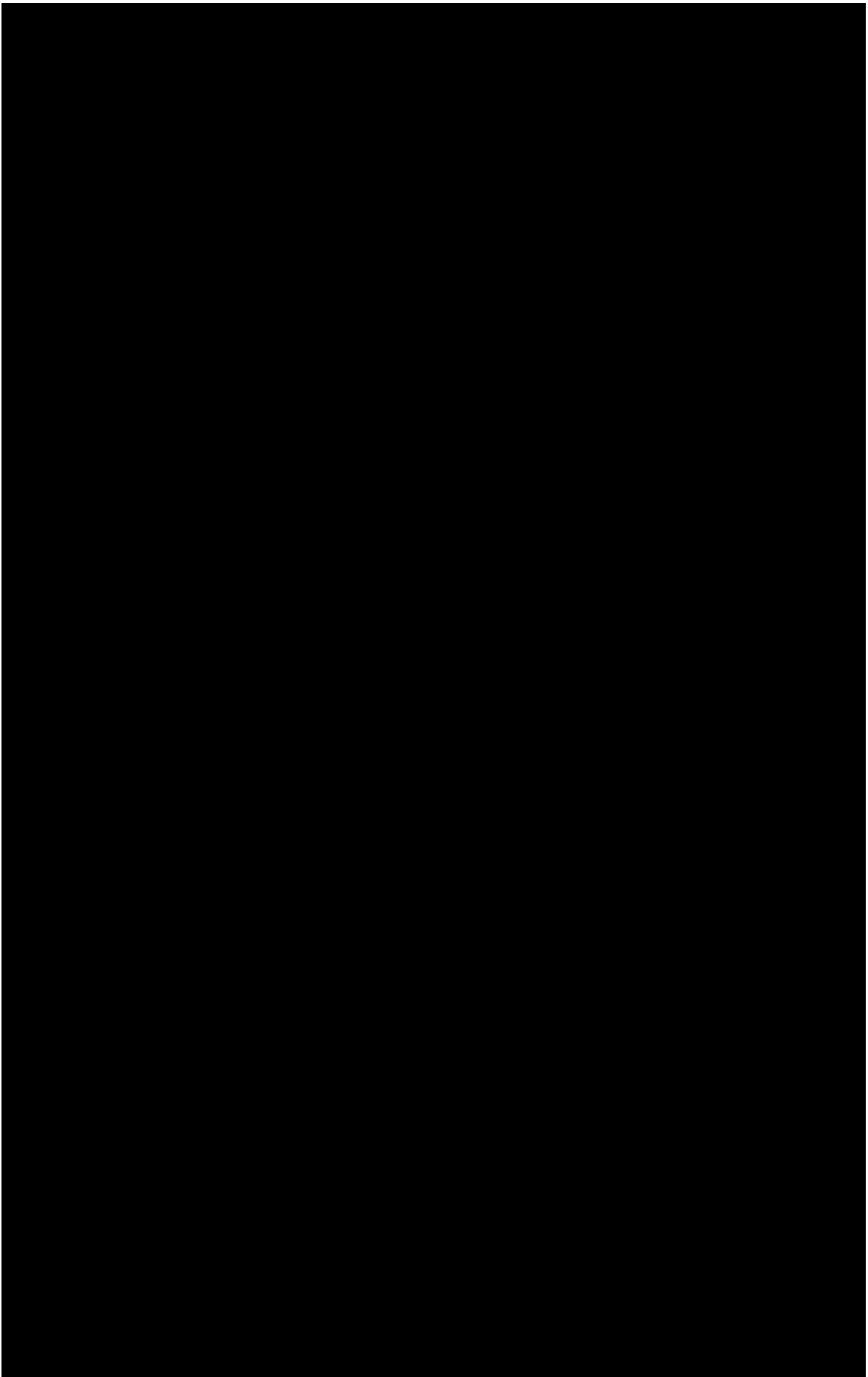
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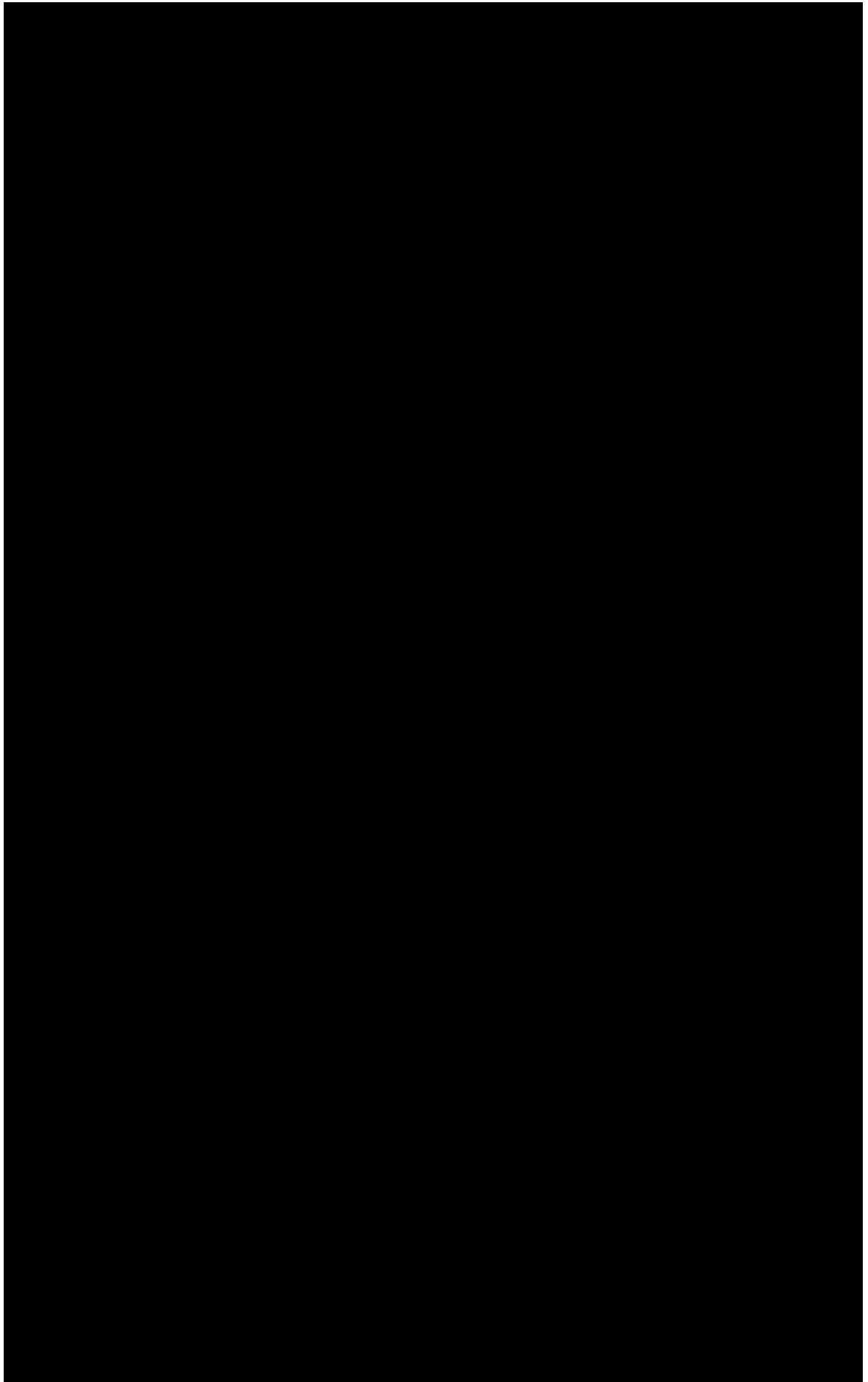
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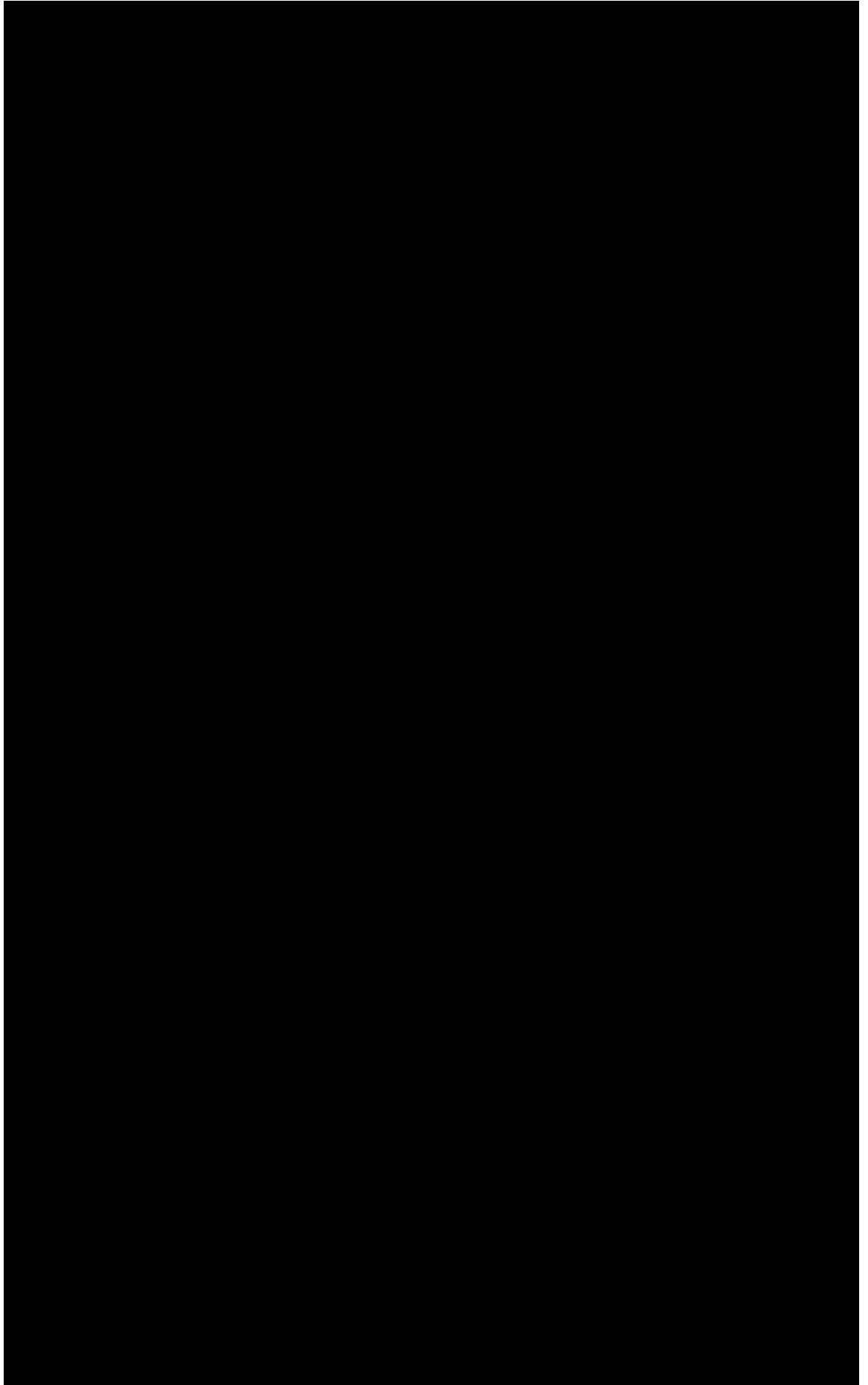
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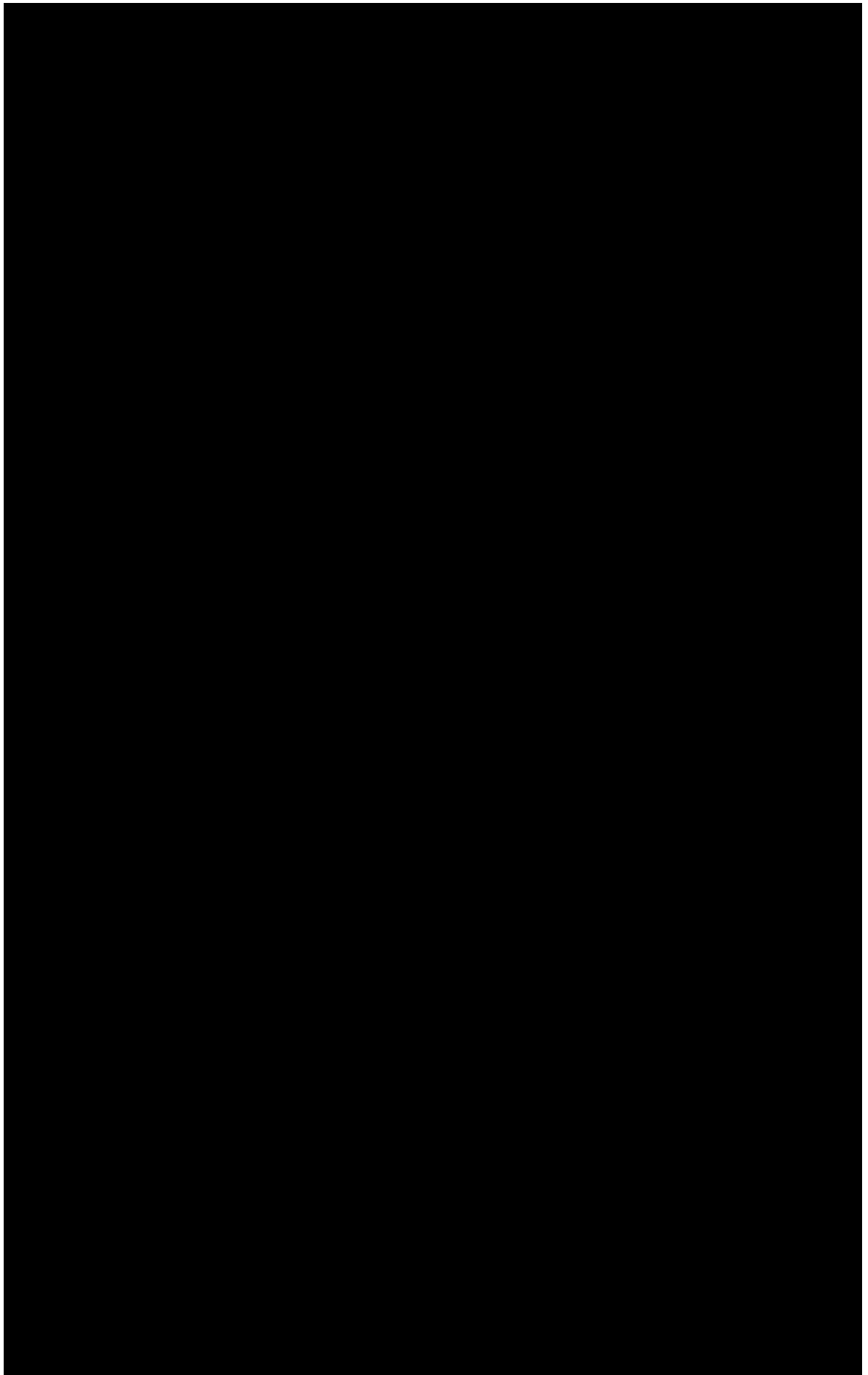
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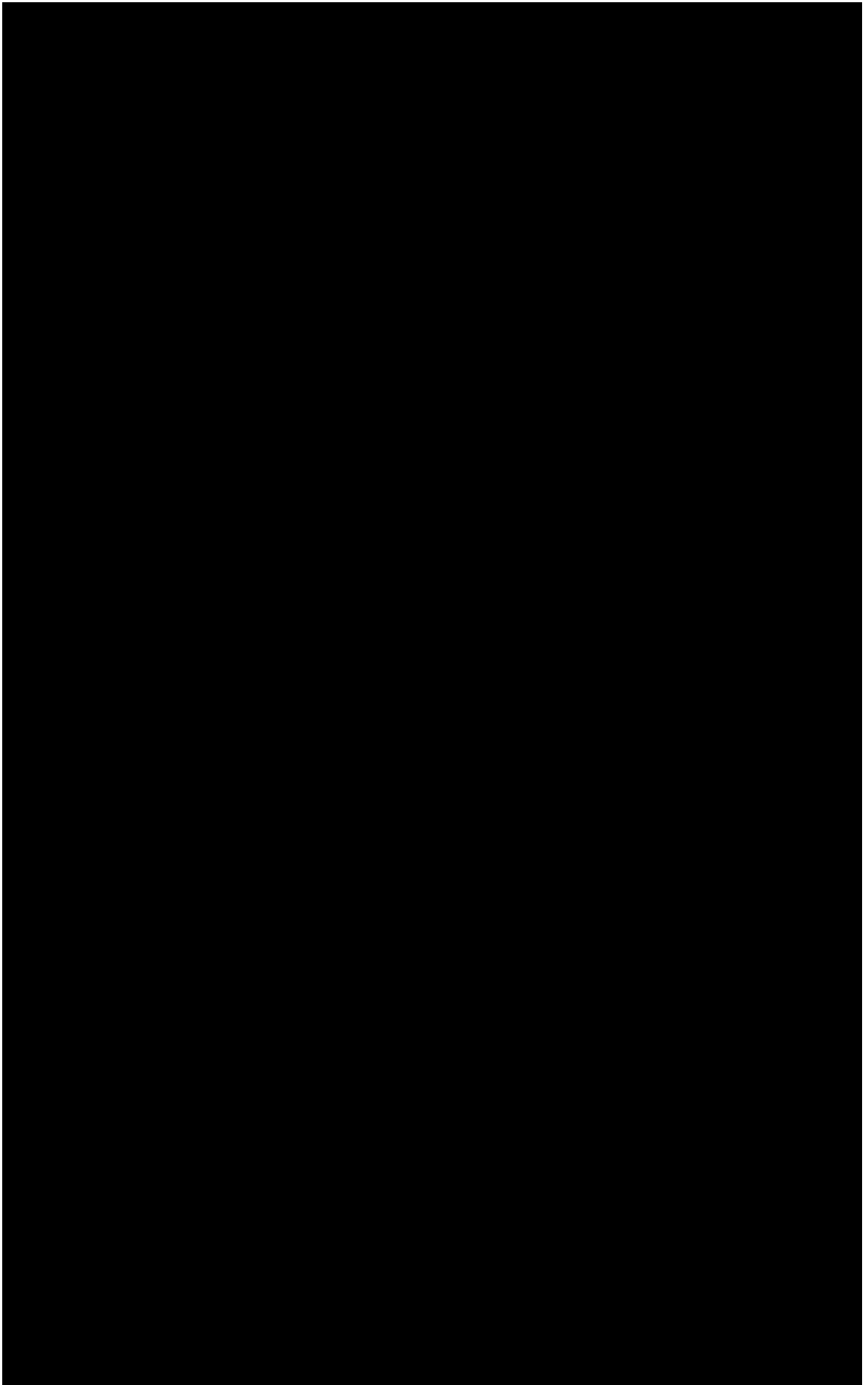
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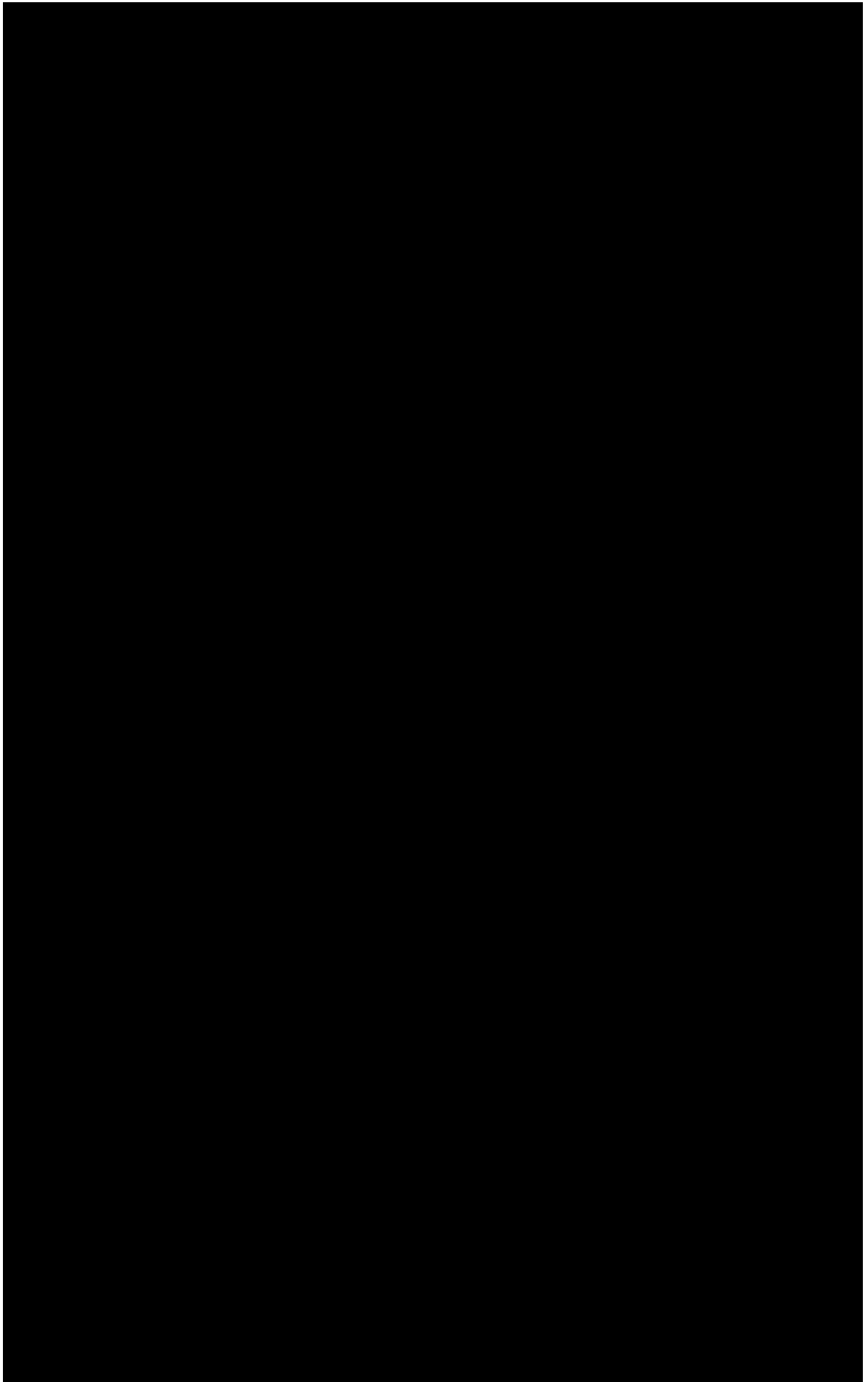
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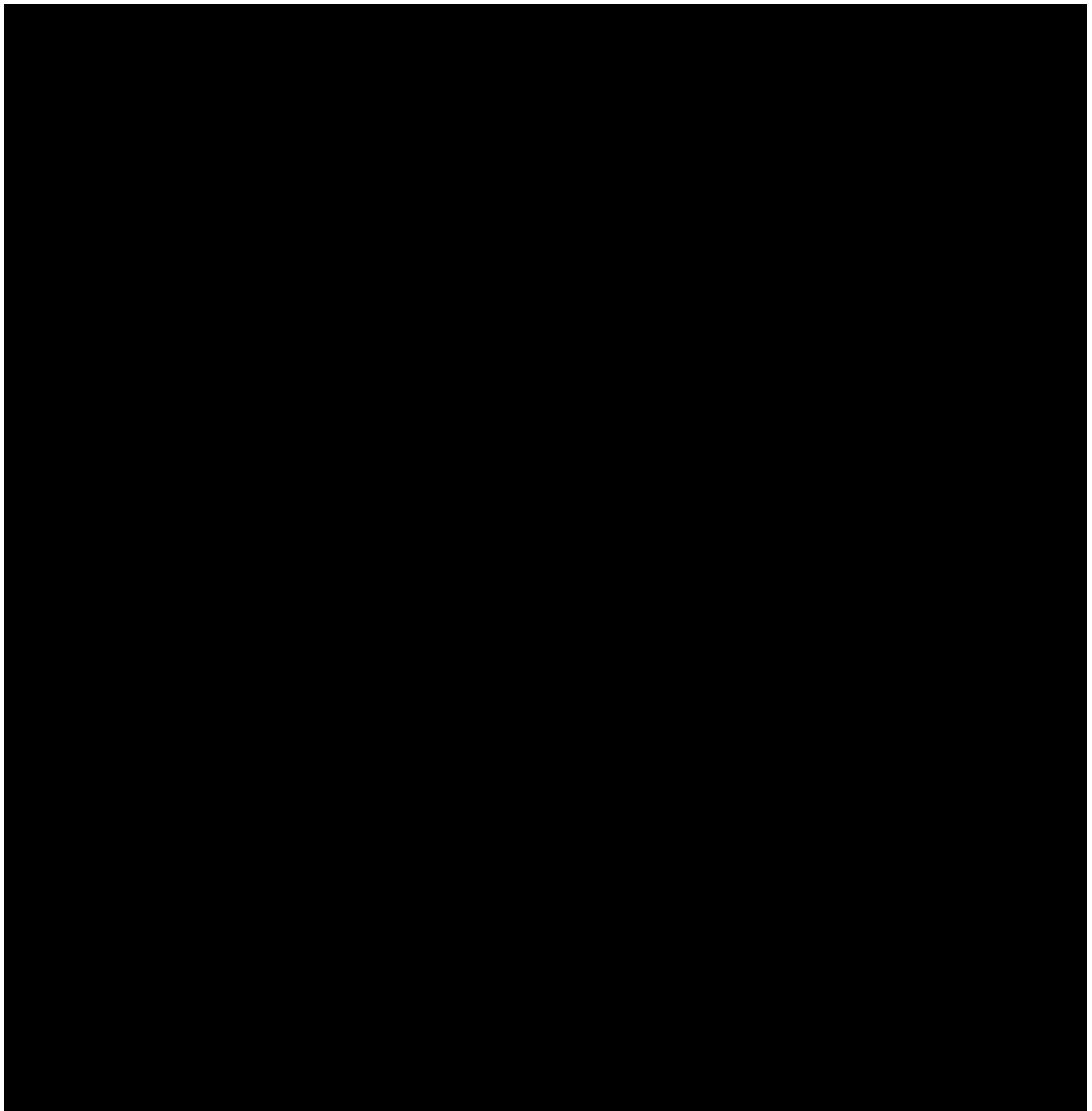
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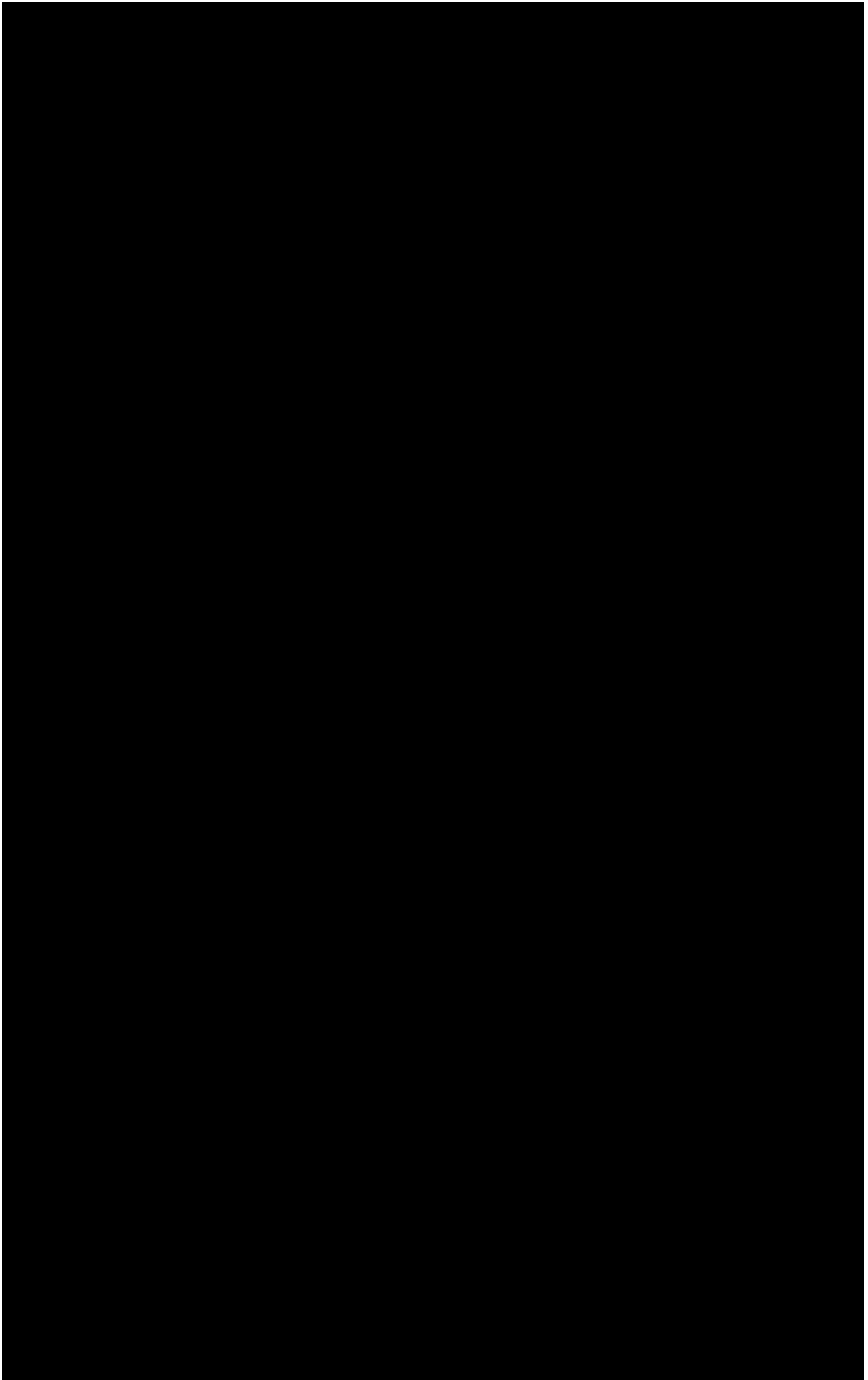
16 Q. When you were -- when you were looking at
17 this report -- well, let me -- let me -- let me do
18 something else.

19 MR. ELSNER: Could we see MR 336.

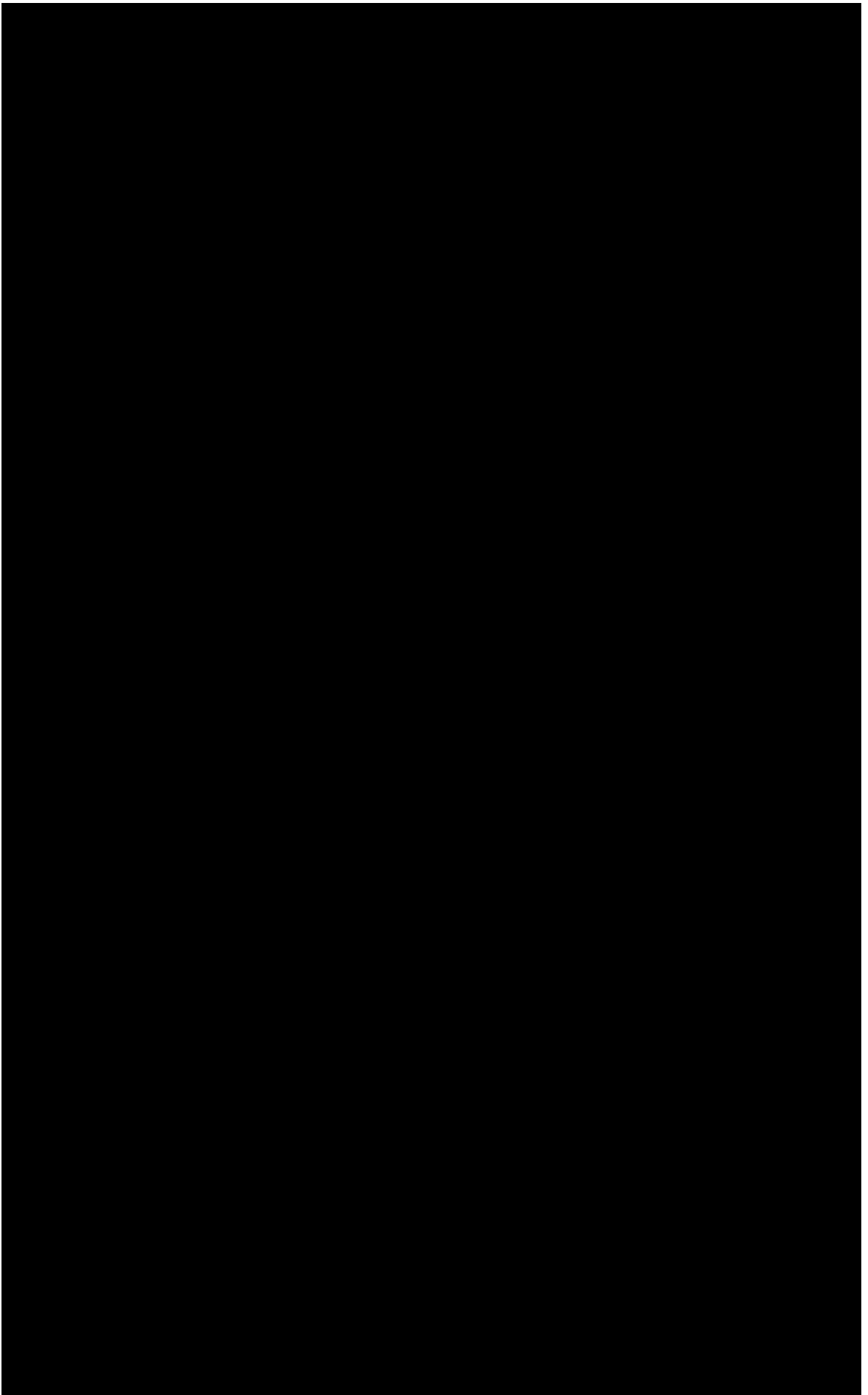
20 (WHEREUPON, a certain document was
21 marked CVS - Elsner Deposition
22 Exhibit No. 8, for identification, as
23 of 01/24/2019.)

24 BY MR. ELSNER:

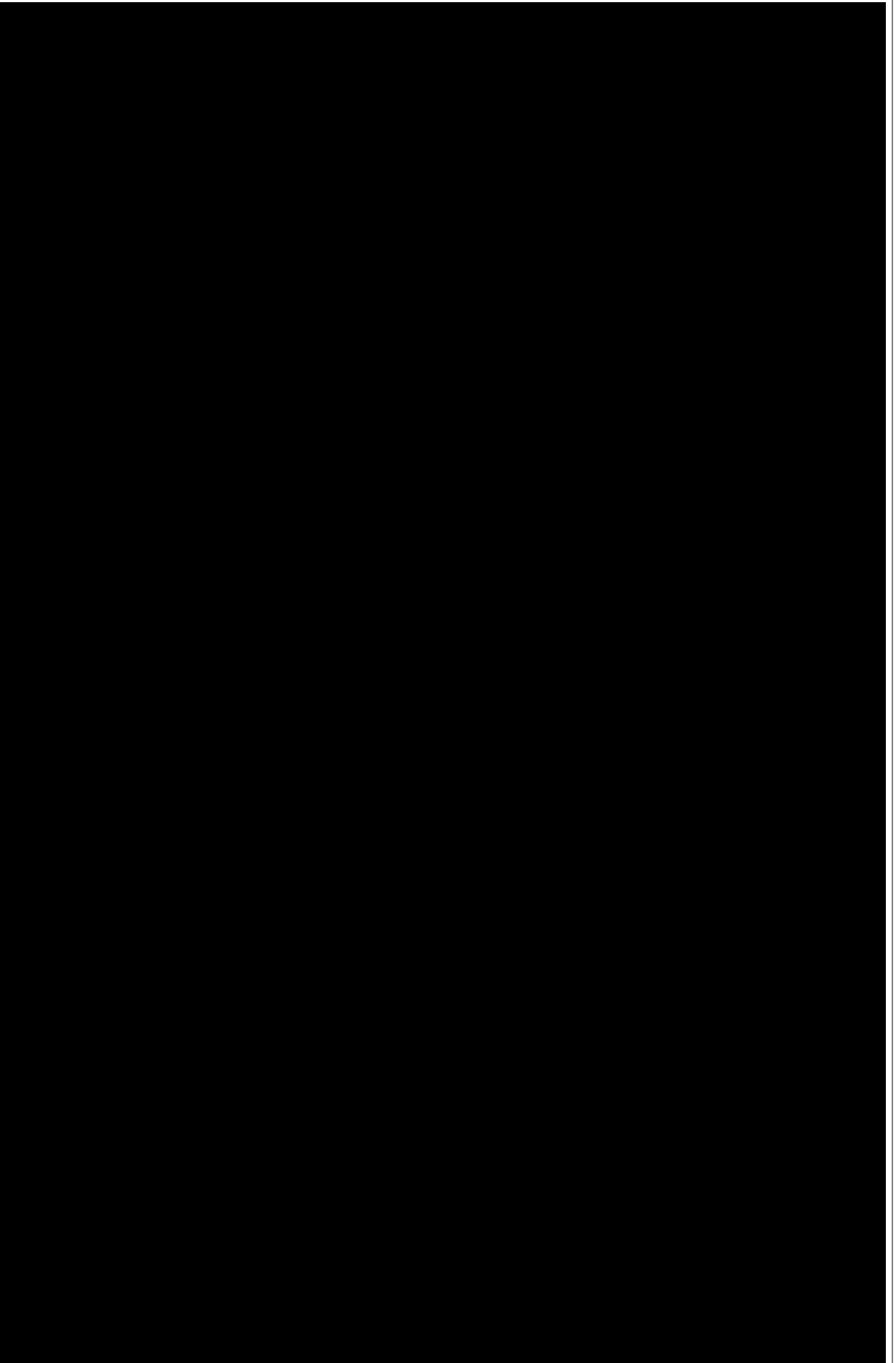
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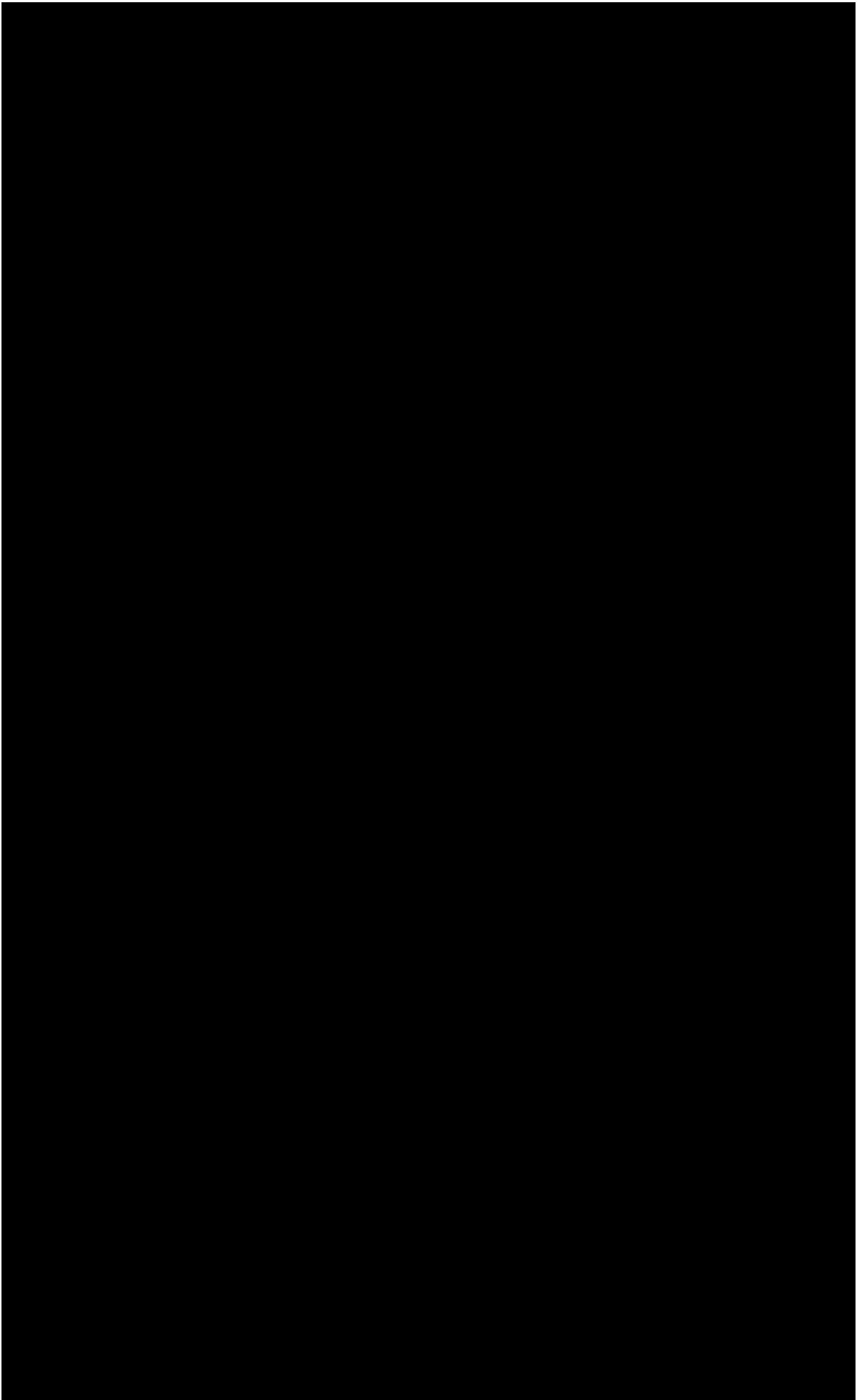
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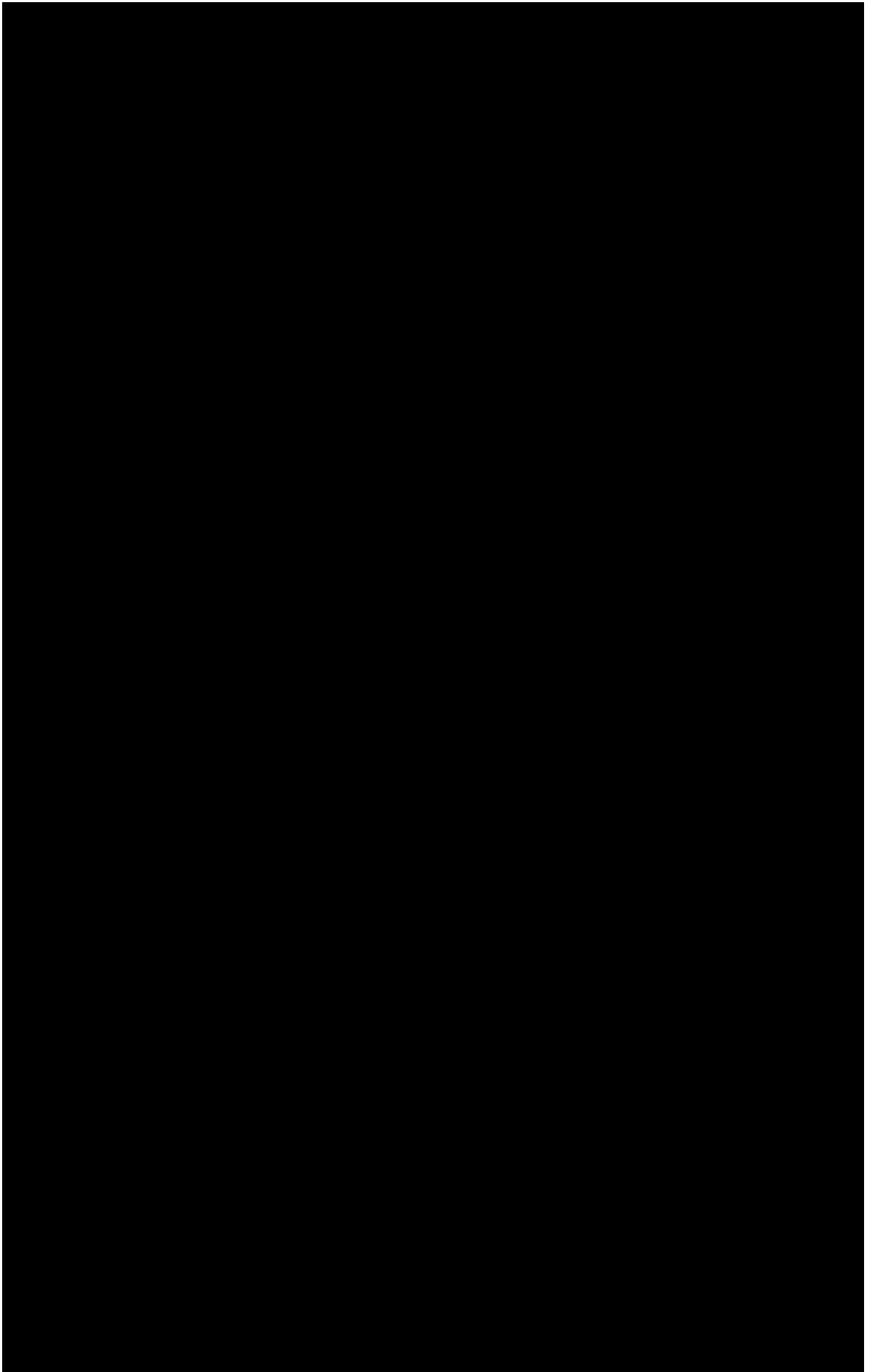
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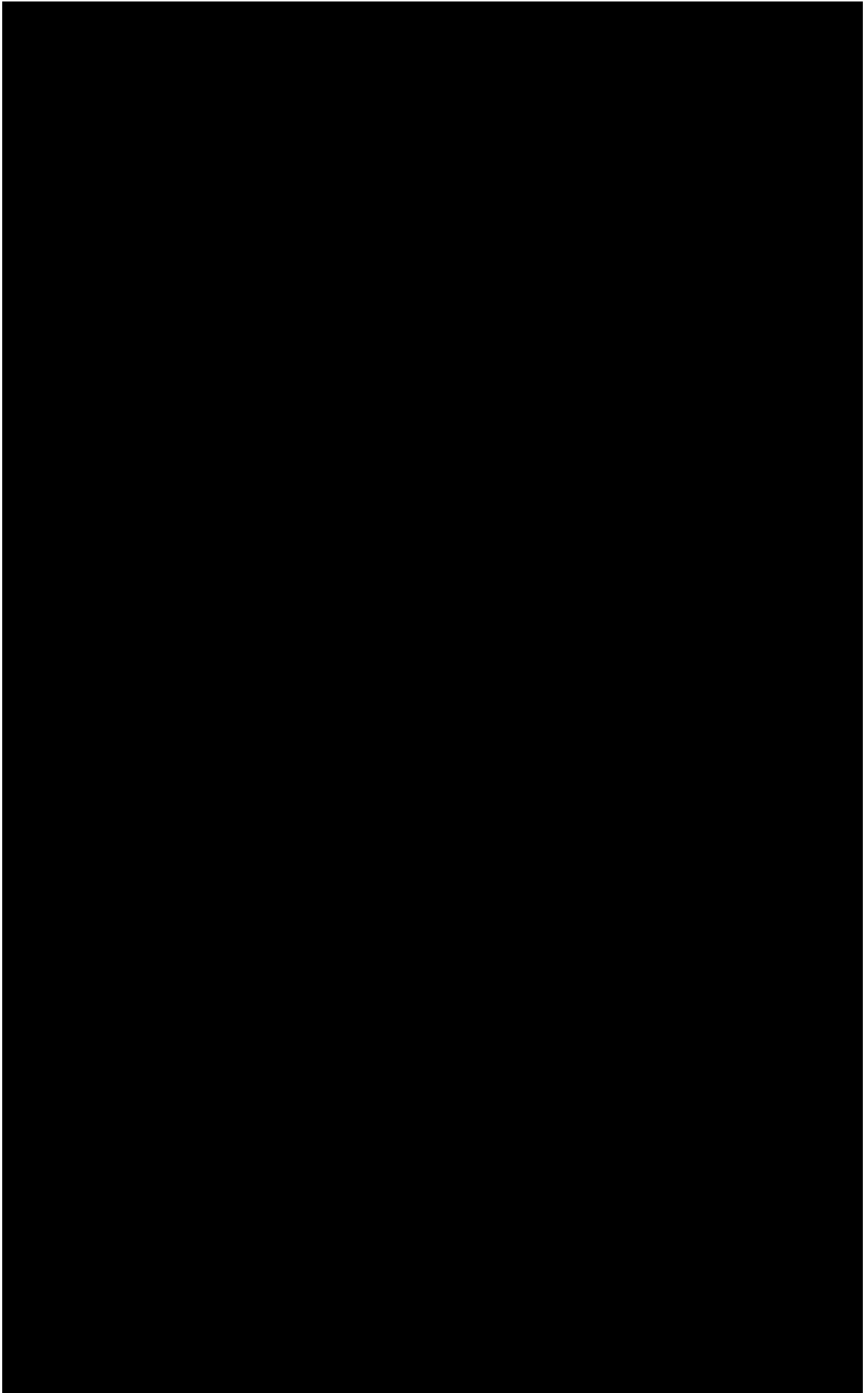
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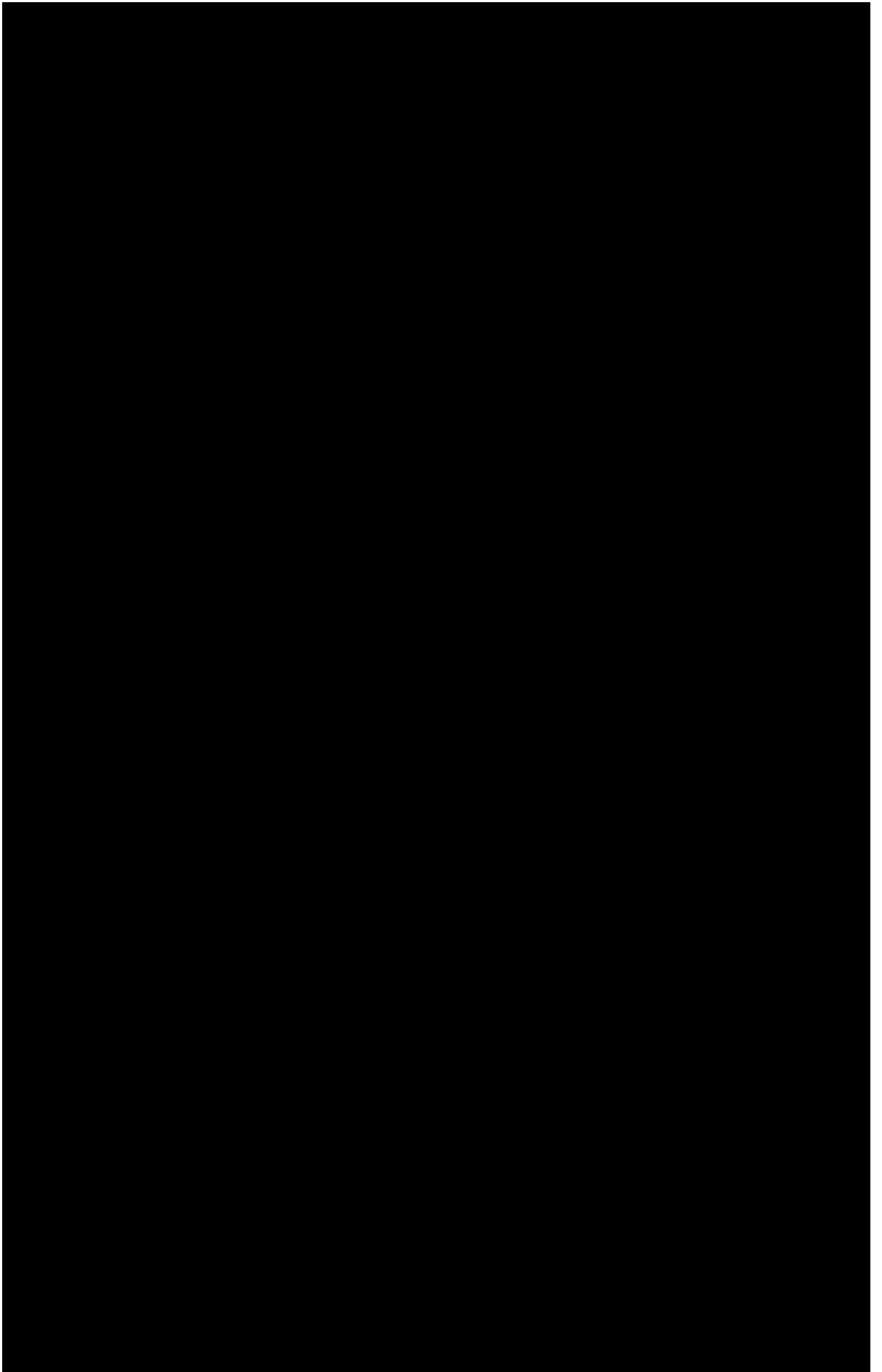
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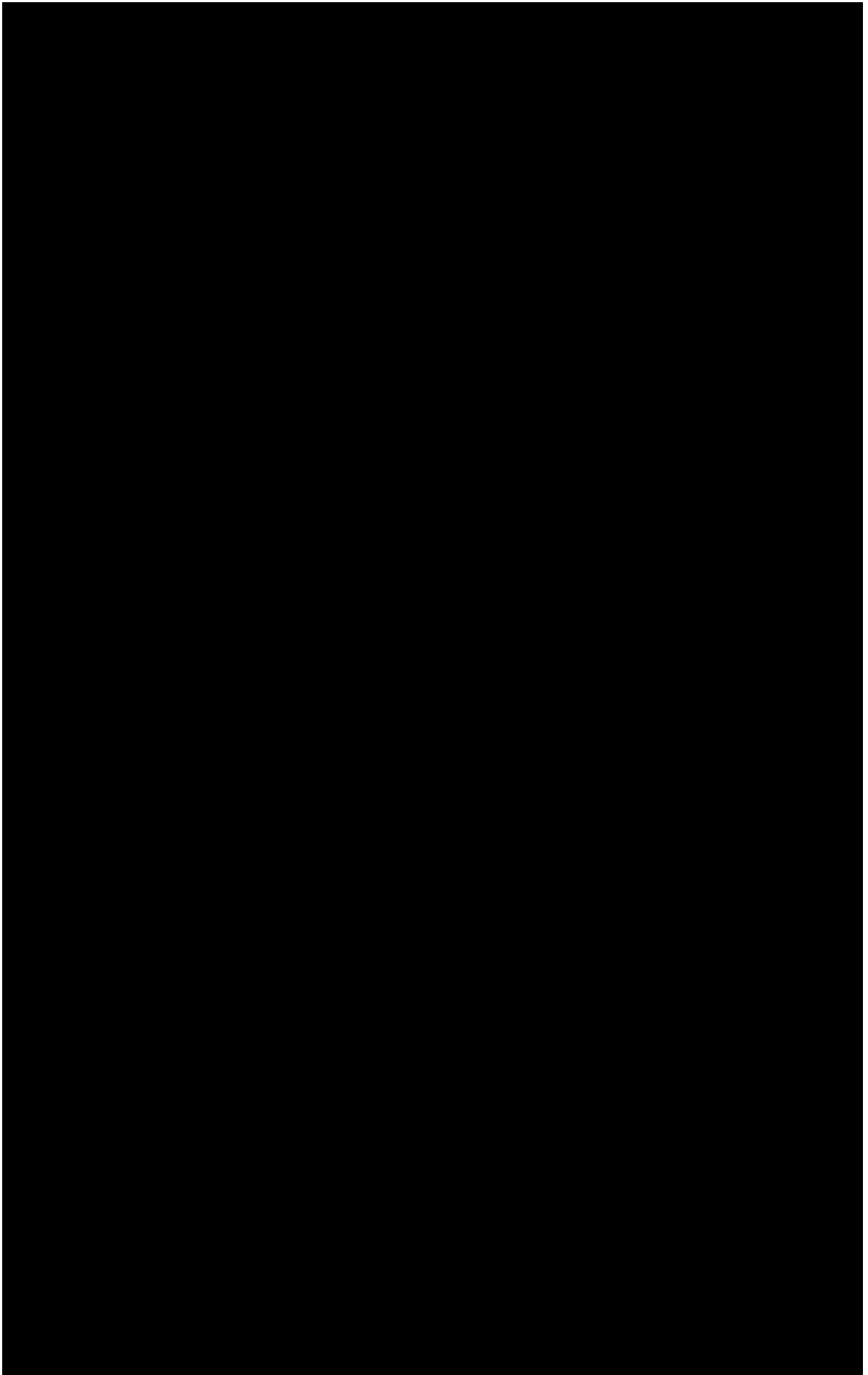
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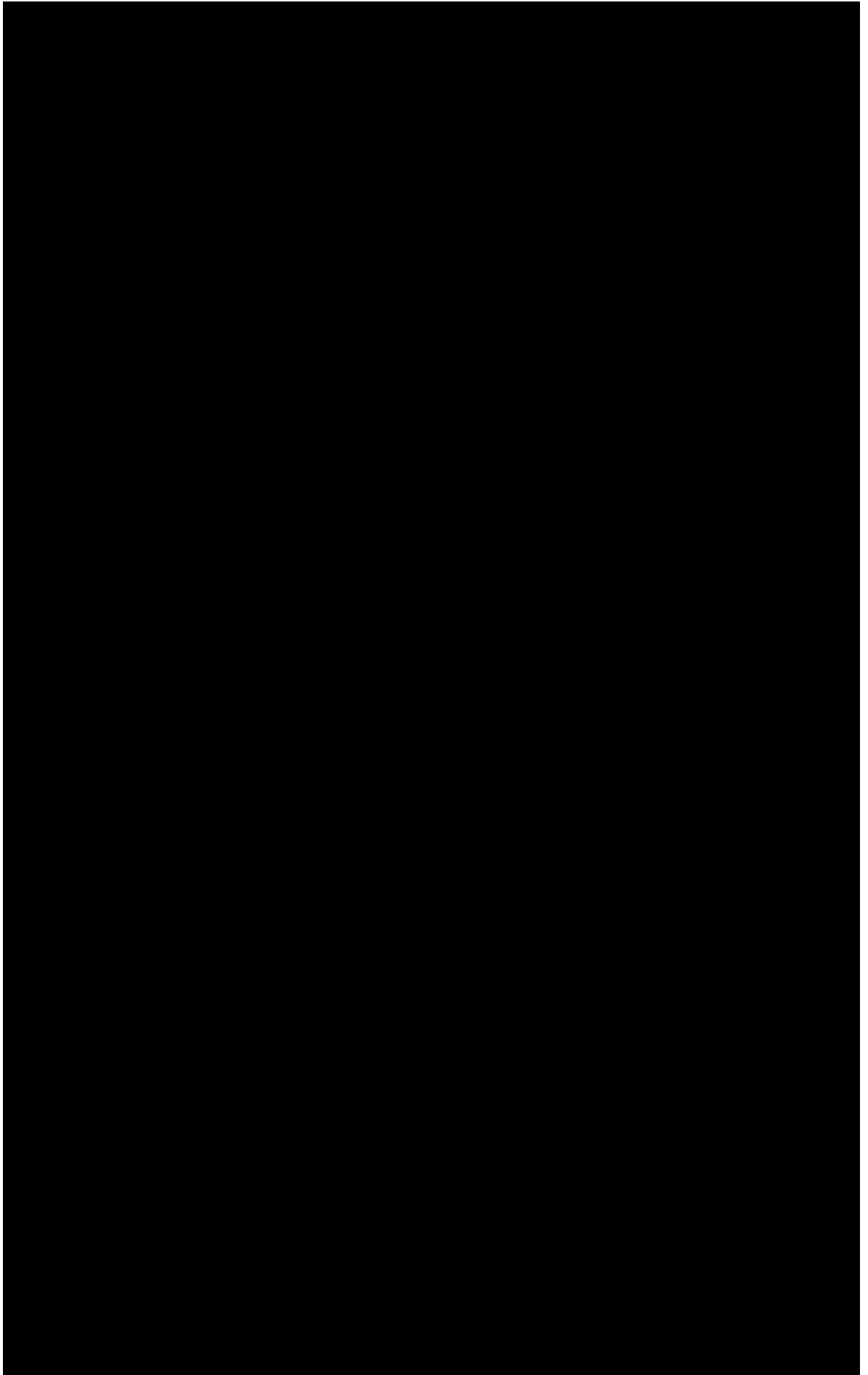
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Q. And then from the orders that were in that spreadsheet, would you use all of the ones that you -- that were color coded as red as the ones you'd do the deeper dive, would you do the yellows, and how many a day would you --

14

A. I --

15

Q. -- do a deeper dive on?

16

MR. CLARK: Object to the --

17

BY THE WITNESS:

18

A. Honestly, all I remember --

19

MR. CLARK: Object to the form. Sorry.

20

THE WITNESS: Huh?

21

MR. CLARK: I'm sorry.

22

BY THE WITNESS:

23

A. All I remember is the horse story. That

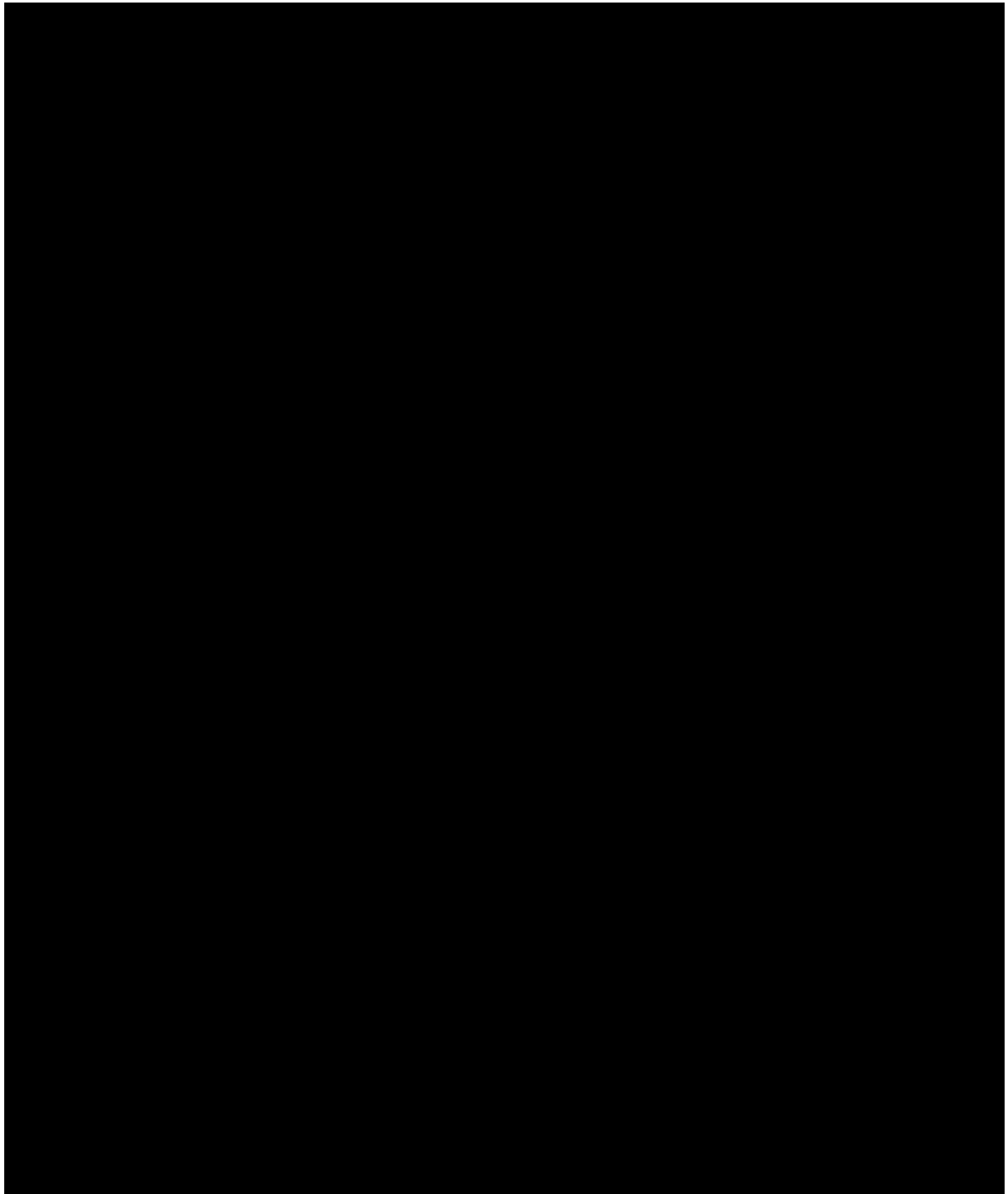
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kind of ex -- because I've told that several times.

1 That's an -- it illustrated what I was doing. That
2 stuck out.

3 How it stuck out, why it stuck out, I
4 don't remember. What color it was, I don't remember,
5 but I called and that illustrated what I would do on a
6 daily basis.

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10 BY THE WITNESS:

11 A. I don't remember the -- like I say, the
12 only thing I remember is because, I explain it to
13 people, you are looking for if a store ordered more
14 than it was giving out, where was it going. And
15 that's about the only thing I can remember.

16 I mean, what you are saying is making
17 sense, it sounds like something you should probably
18 do, but I can't say that I did or did not do it, you
19 know. I just can't remember.

20 BY MR. ELSNER:

21 Q. I do -- I do try to make sense. I'm
22 rarely successful --

23 A. Yeah, no, and I --

24 Q. -- but I do -- I do try.

1 A. -- I understand what you are trying to get
2 at here and I -- I understand.

3 Q. Well --

4 A. I'm not trying to be difficult. I just
5 don't want to say something I don't remember.

6 Q. All I want you to do today is let's work
7 together to try to extract the things that you can
8 remember and I'll try to do my best to show you some
9 things to help you to try to remember and then -- and
10 then you'll do your best to try to tell me what you
11 remember.

12 If we went back to this IRR report that we
13 looked at, the -- the -- the document with all of
14 the -- the lines down the side, right?

15 MR. CLARK: Which exhibit is it, Mike? Seven?

16 THE WITNESS: Seven.

17 MR. ELSNER: Seven.

18 THE WITNESS: See, you'll have to look at me
19 pretty soon.

20 BY MR. ELSNER:

21 Q. And if you look at -- if you look at
22 Page 10744.

23 A. 10 -- ooh, okay.

24 Q. It is near the very back of the document.

1 A. Yeah.

2 Q. On the very top there are also some
3 numbers, MR 278-73.

4 A. MR.

5 Okay. Where are you at?

6 Q. Are you with me?

7 MR. ELSNER: If you go to the bottom of that
8 page, John.

9 BY THE WITNESS:

10 A. Yes, I see.

11 MR. ELSNER: If you go -- if you can -- yeah.

12 BY MR. ELSNER:

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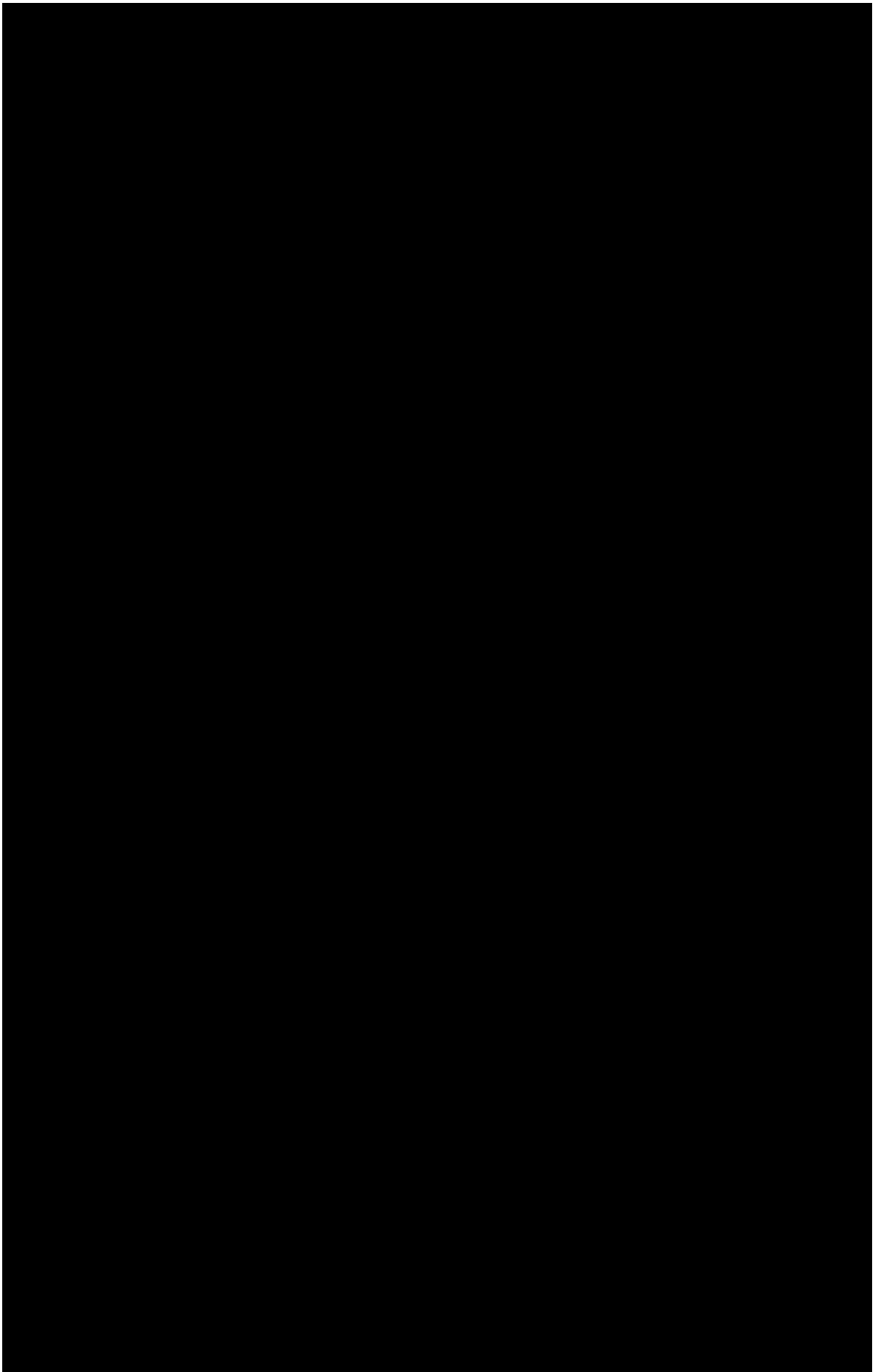
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6 Q. Okay.

7 MR. ELSNER: Can I see MR 333.

8 THE WITNESS: I'm going to take my sweater off.

9 MR. ELSNER: Why don't we go off the record for
10 a second.

11 MR. CLARK: Yeah, let's just go off for a
12 second.

13 THE VIDEOGRAPHER: We are off the record at
14 10:36 a.m.

15 (WHEREUPON, a recess was had
16 from 10:36 to 10:38 a.m.)

17 THE VIDEOGRAPHER: We are back on the record at
18 10:37 a.m.

19 (WHEREUPON, a certain document was
20 marked CVS - Elsner Deposition
21 Exhibit No. 9, for identification, as
22 of 01/24/2019.)

23 BY MR. ELSNER:

24 Q. Okay. Mr. Baker, I'm going to show you

1 Exhibit 9.

2 A. Okay.

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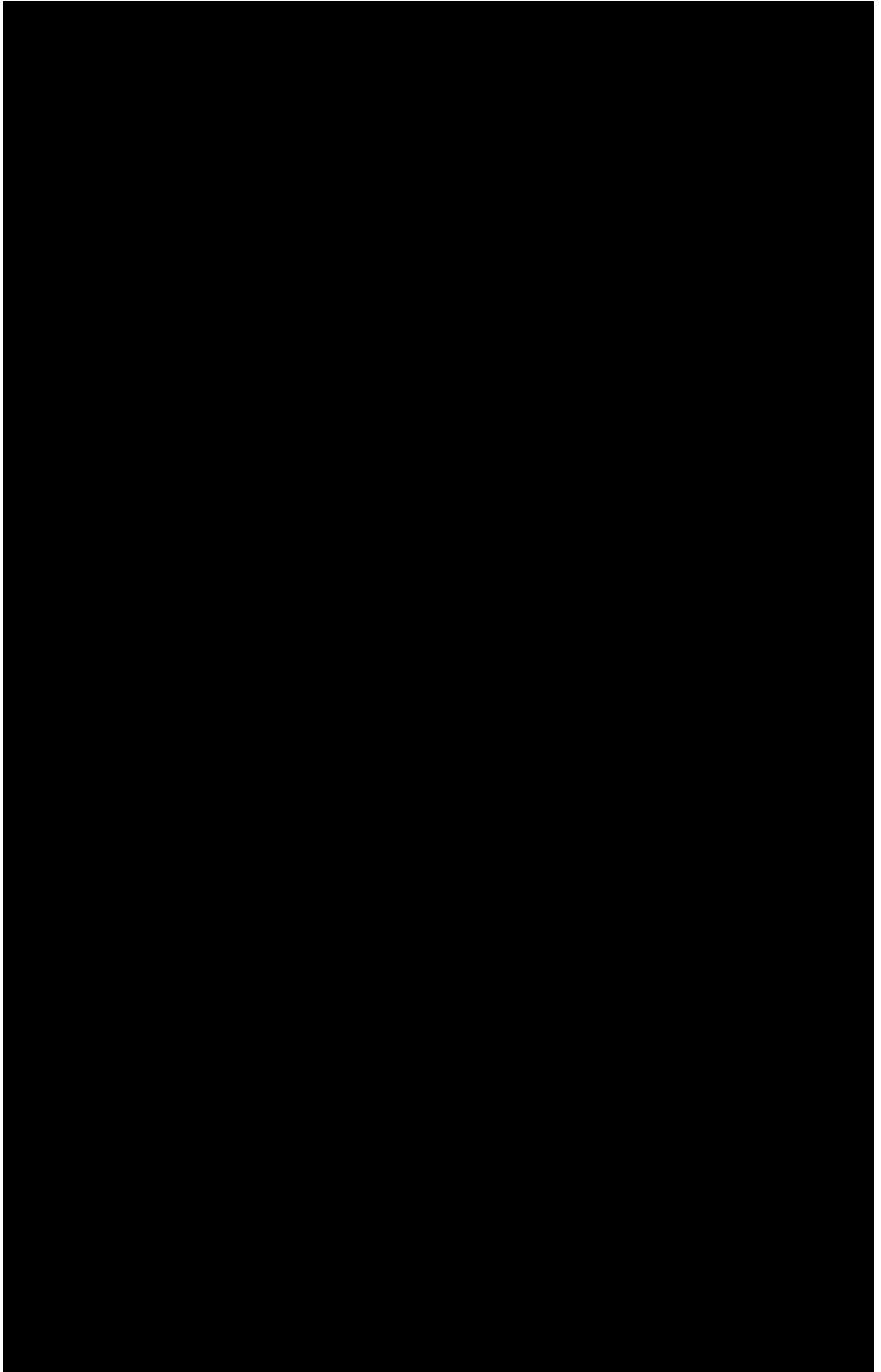
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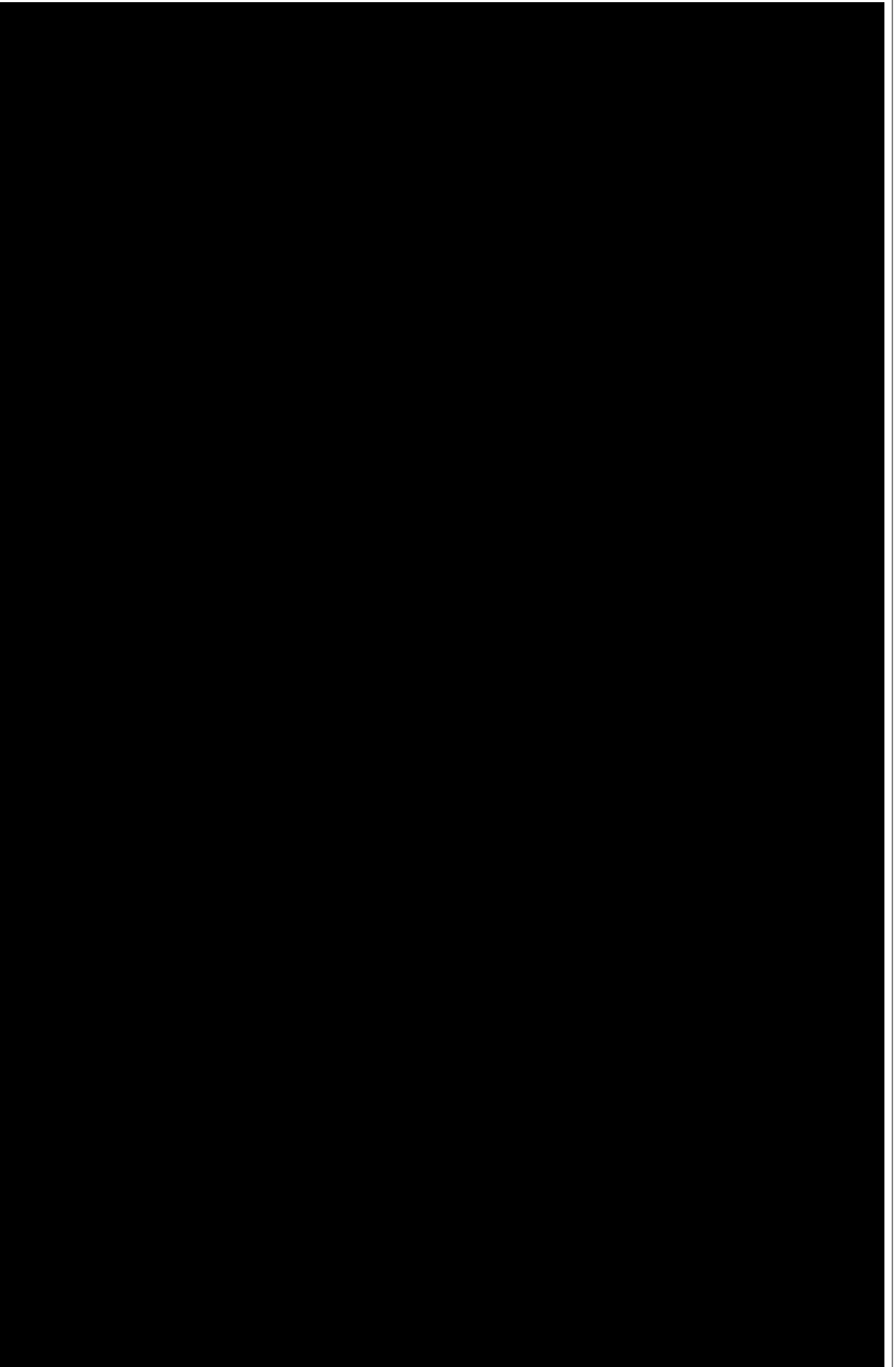
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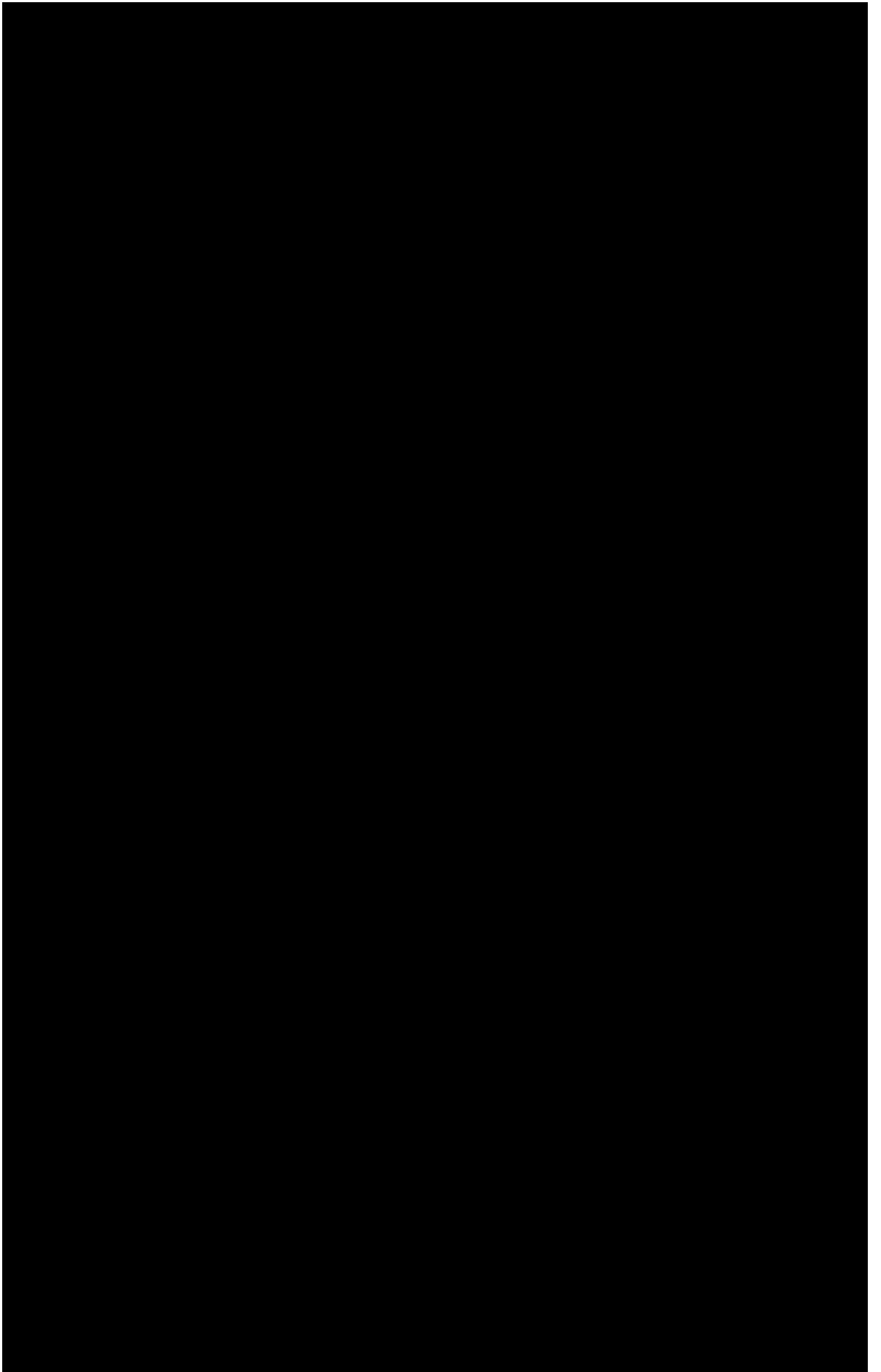
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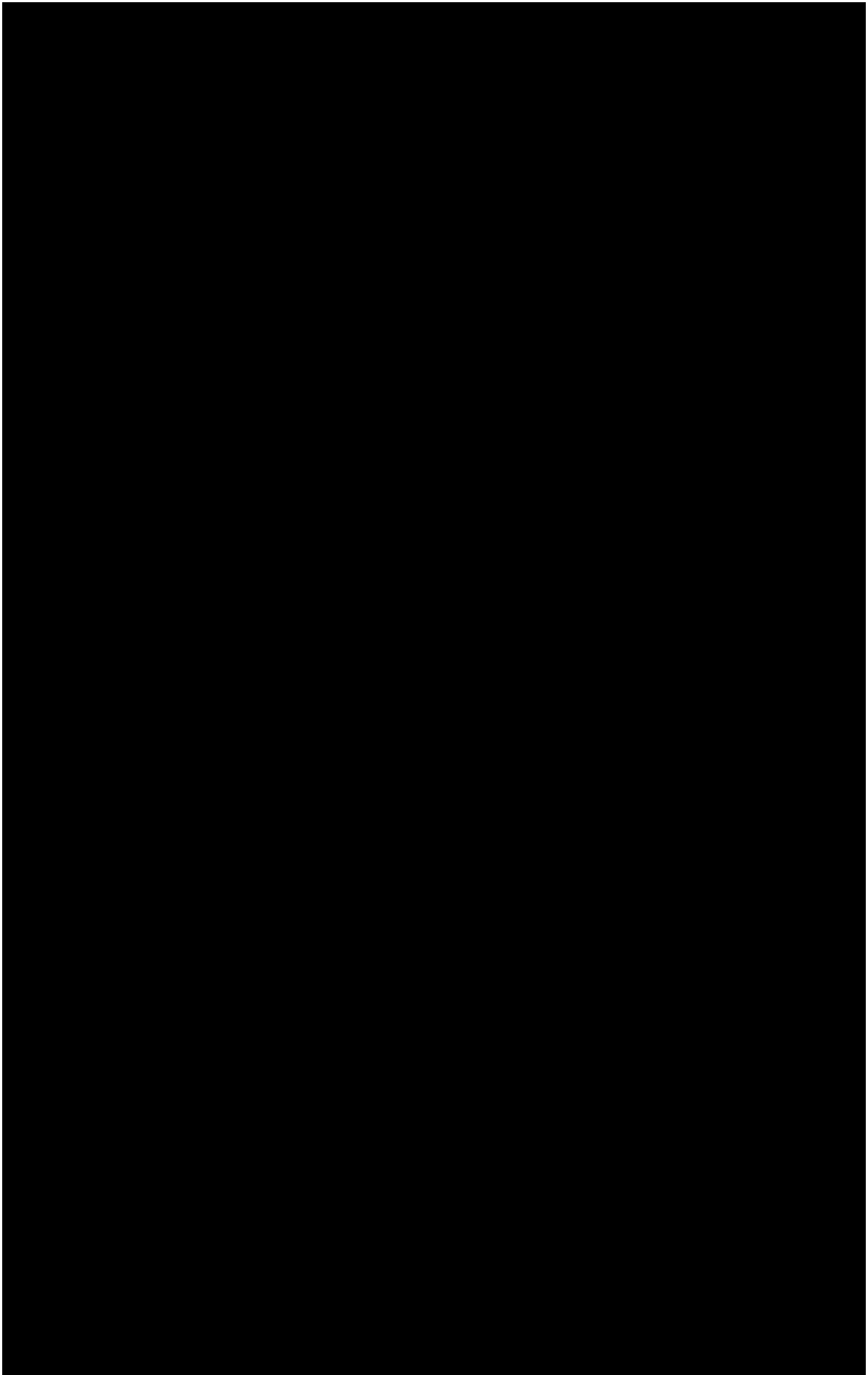
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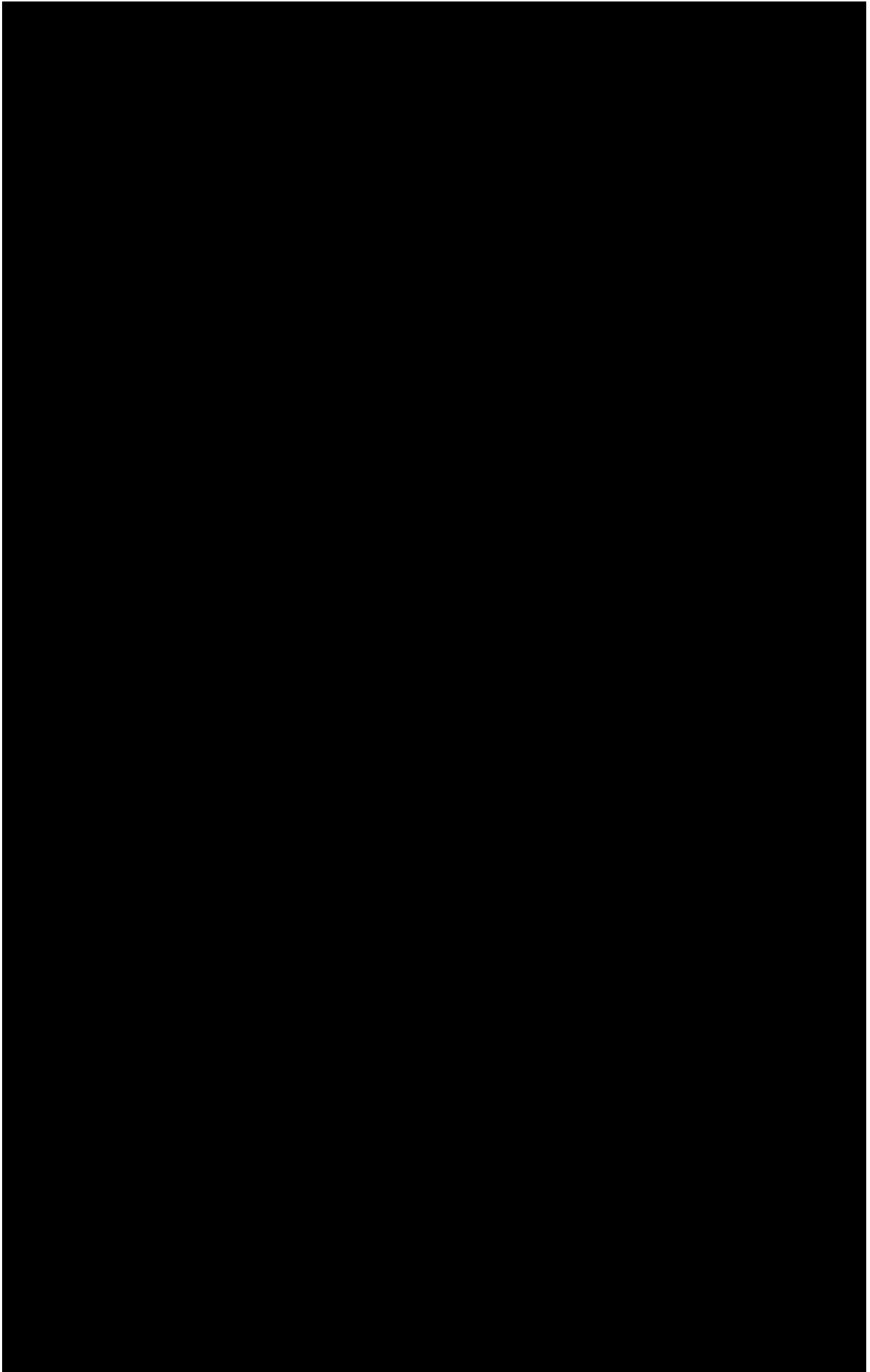
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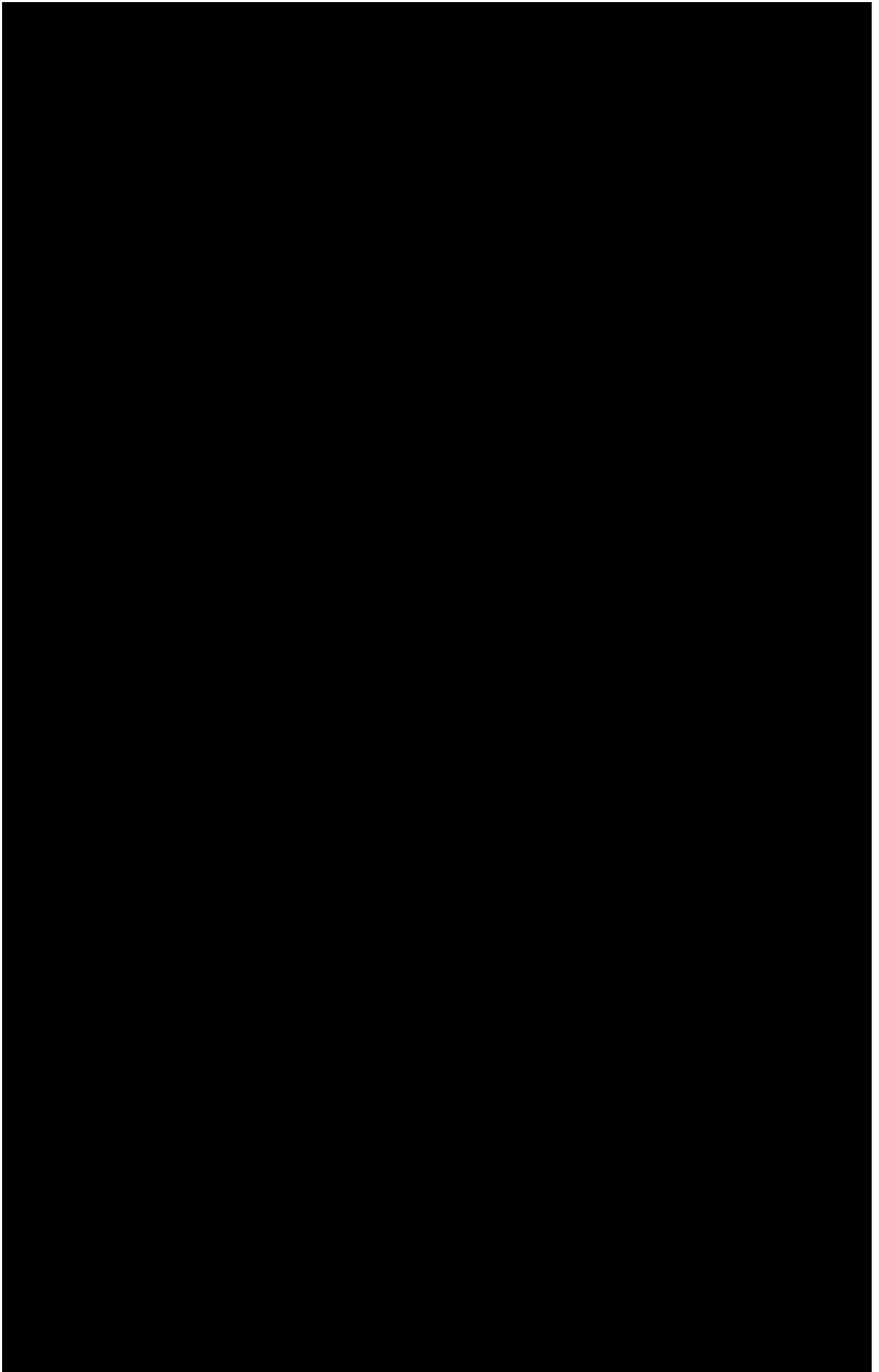
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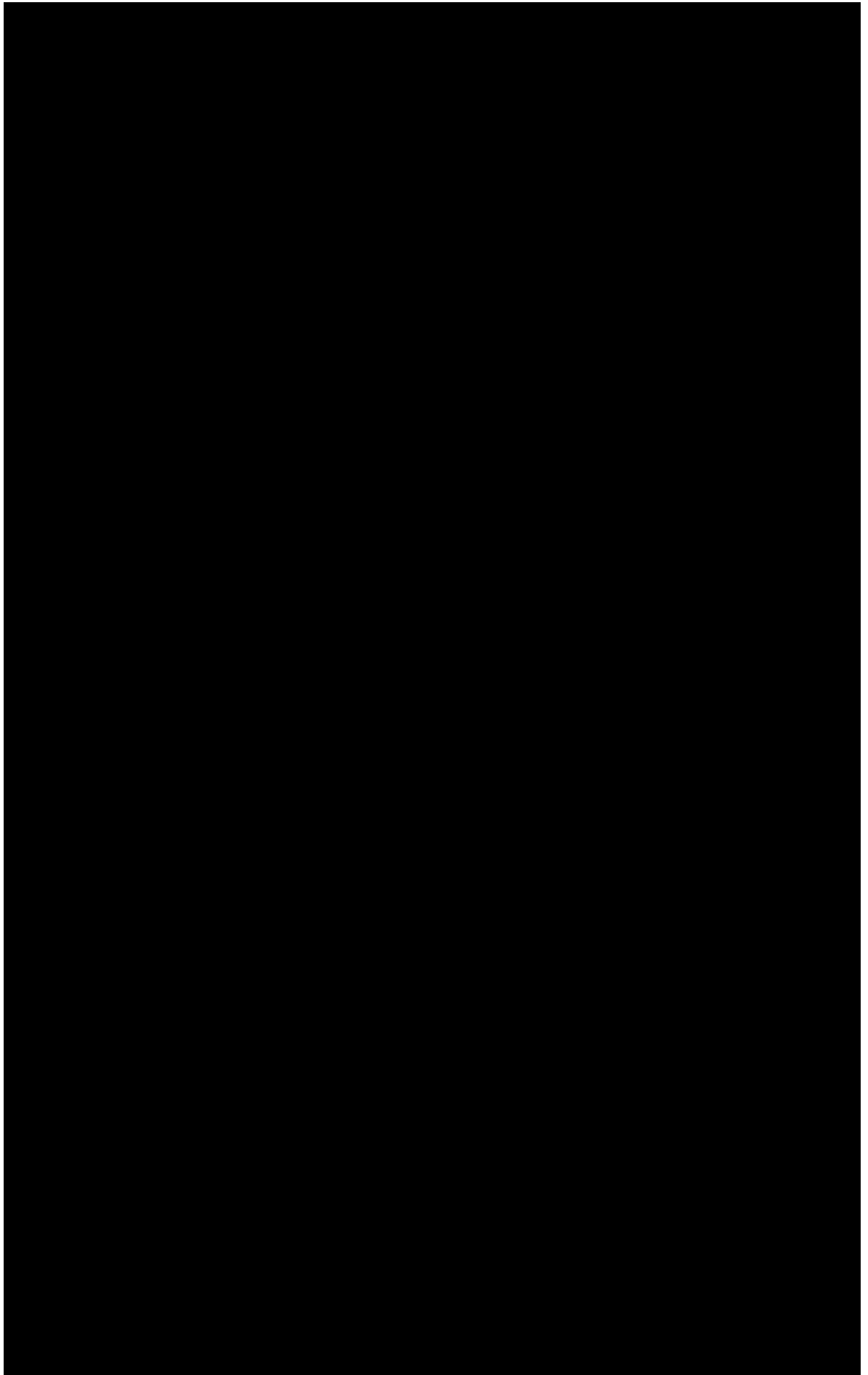
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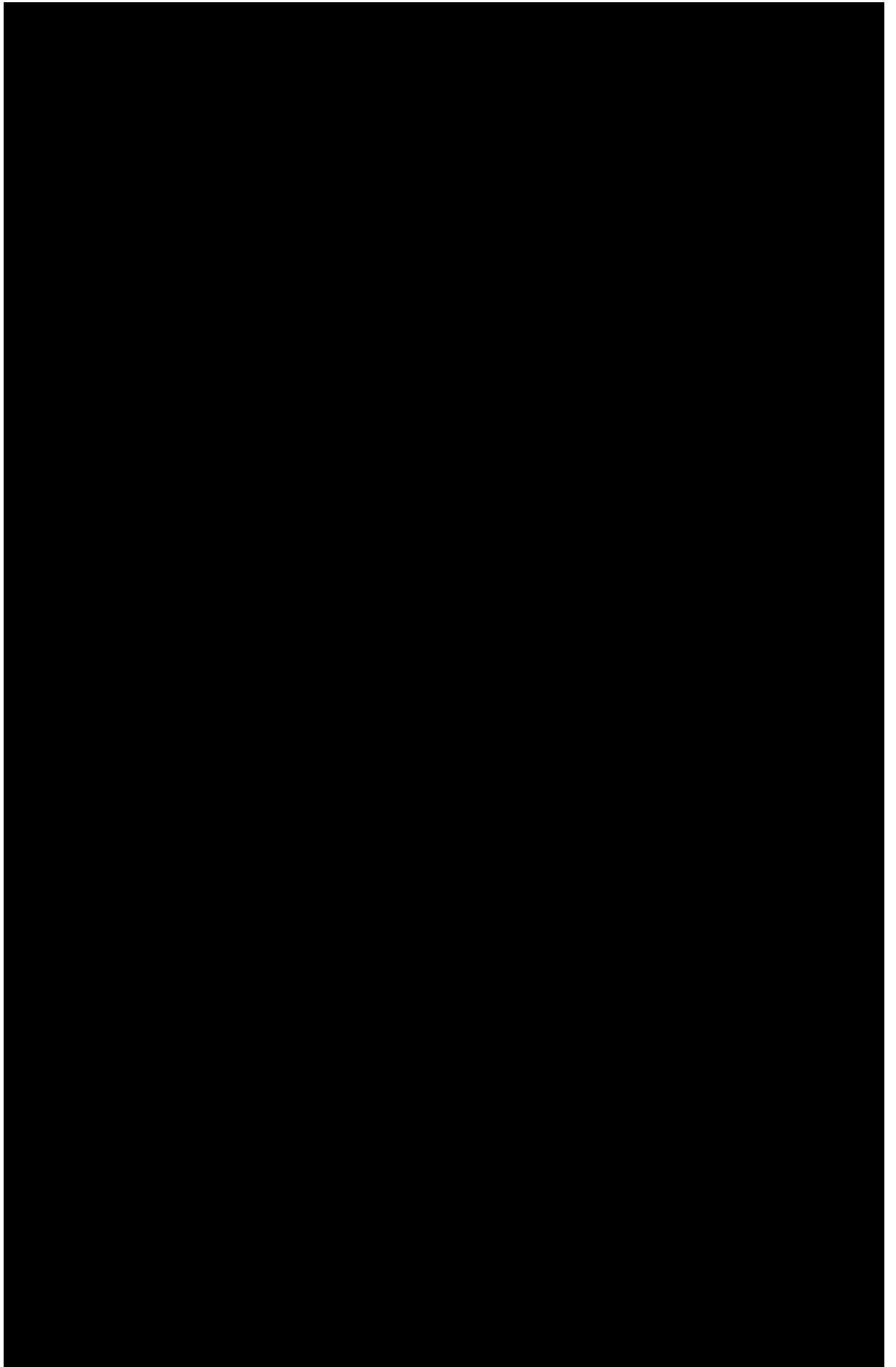
15 Q. Okay. I want to show you a flowchart
16 which we've marked as Exhibit 10.

17 (WHEREUPON, a certain document was
18 marked CVS - Elsner Deposition
19 Exhibit No. 10, for identification,
20 as of 01/24/2019.)

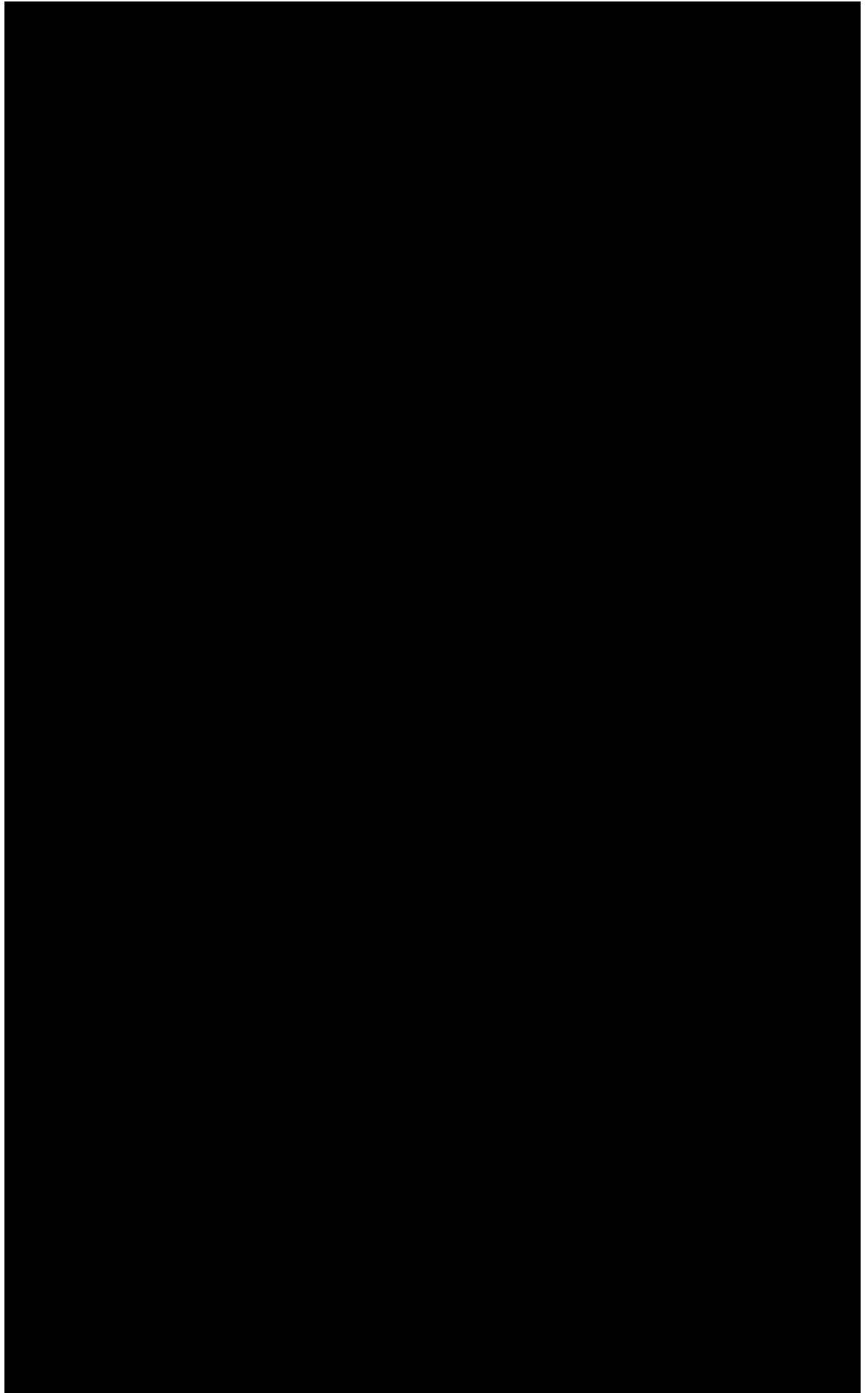
21 BY MR. ELSNER:

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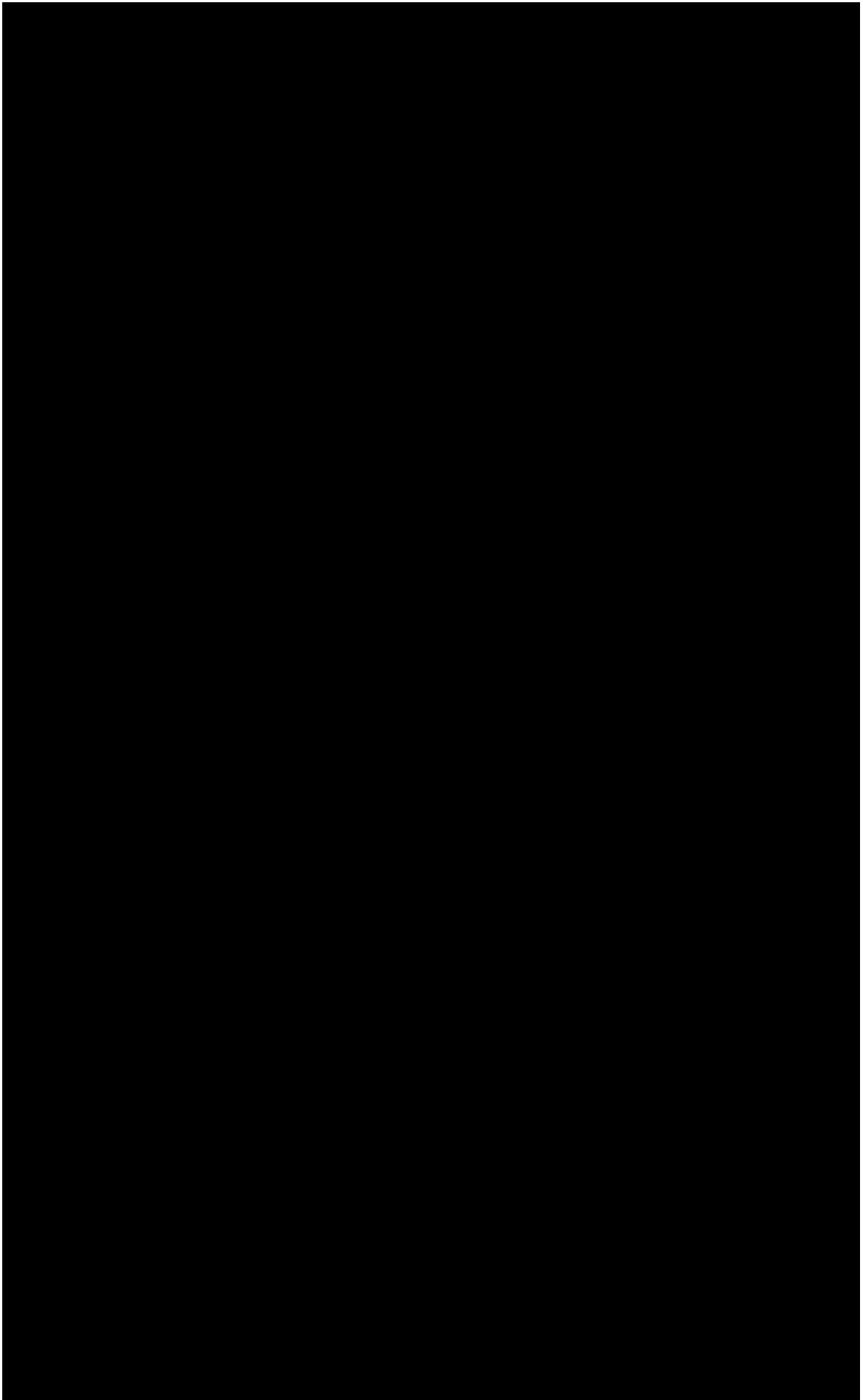
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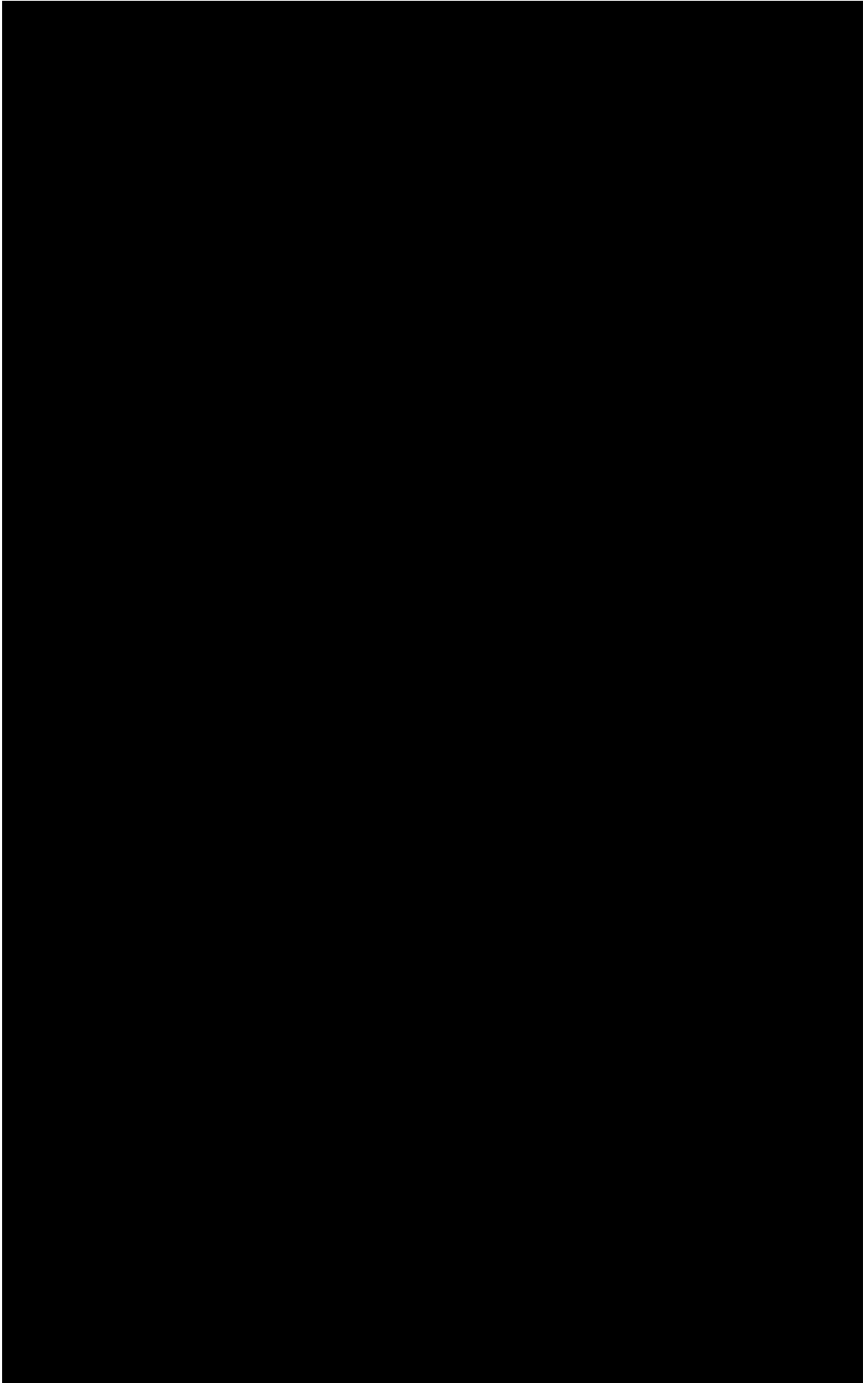
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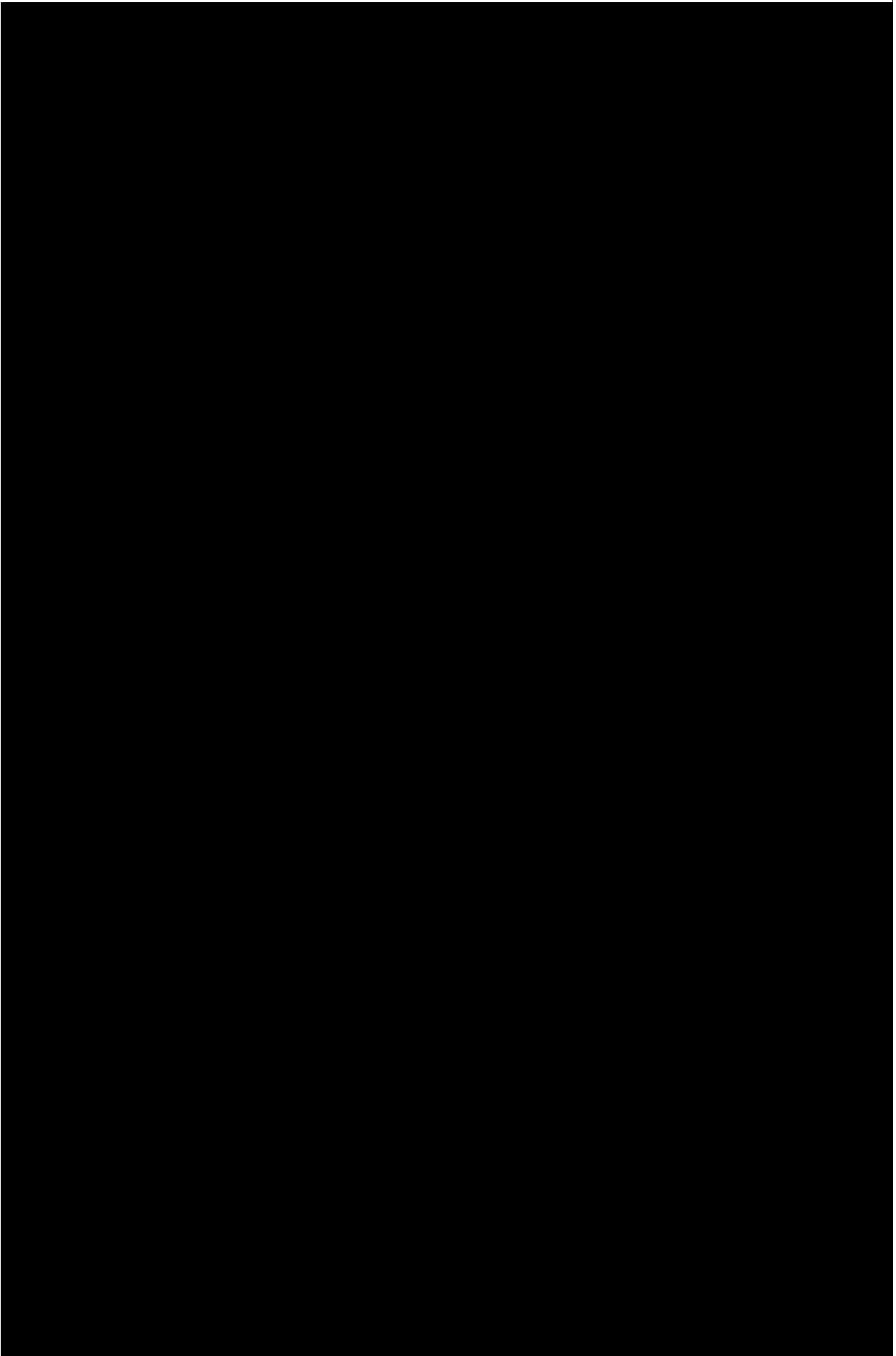
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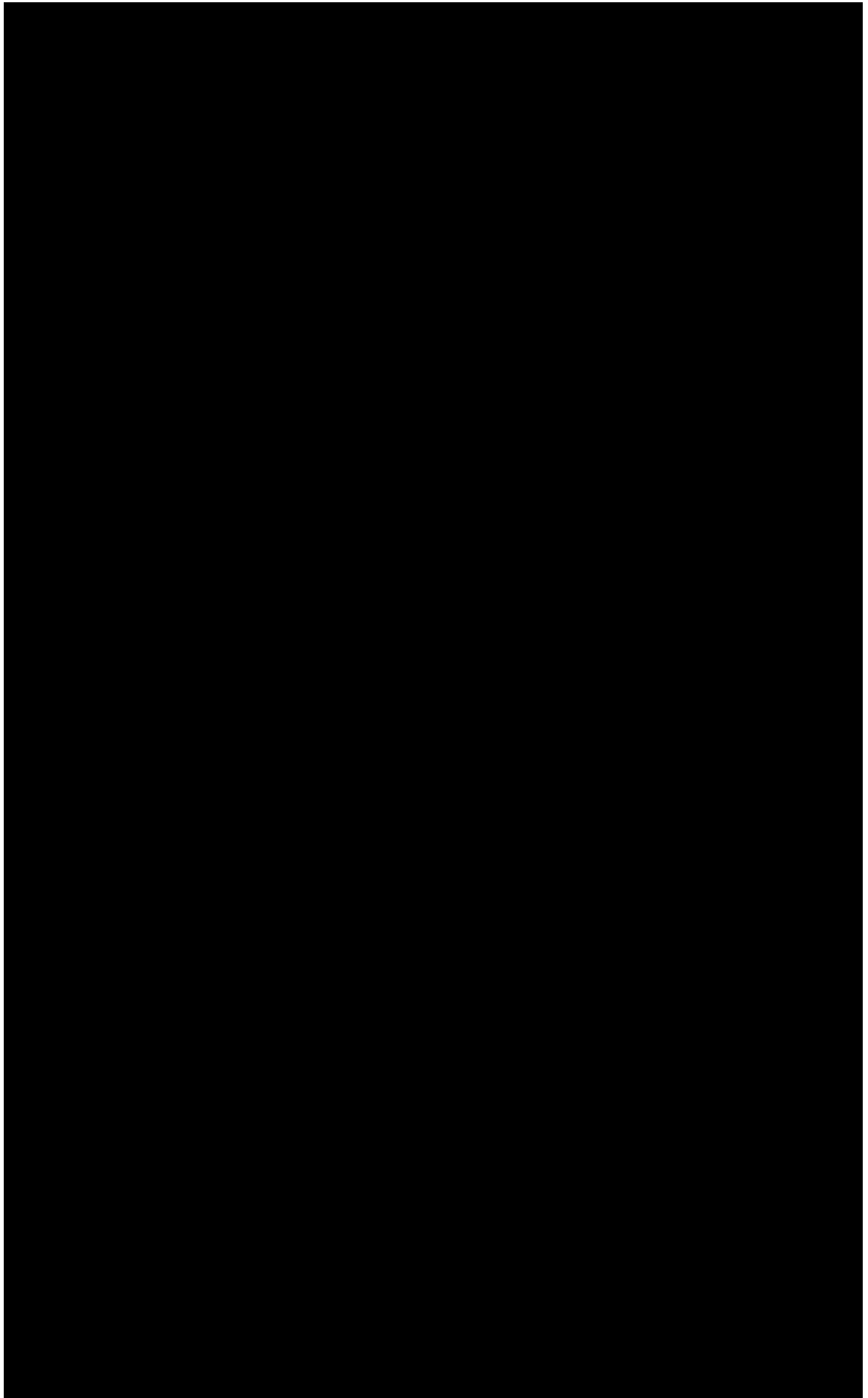
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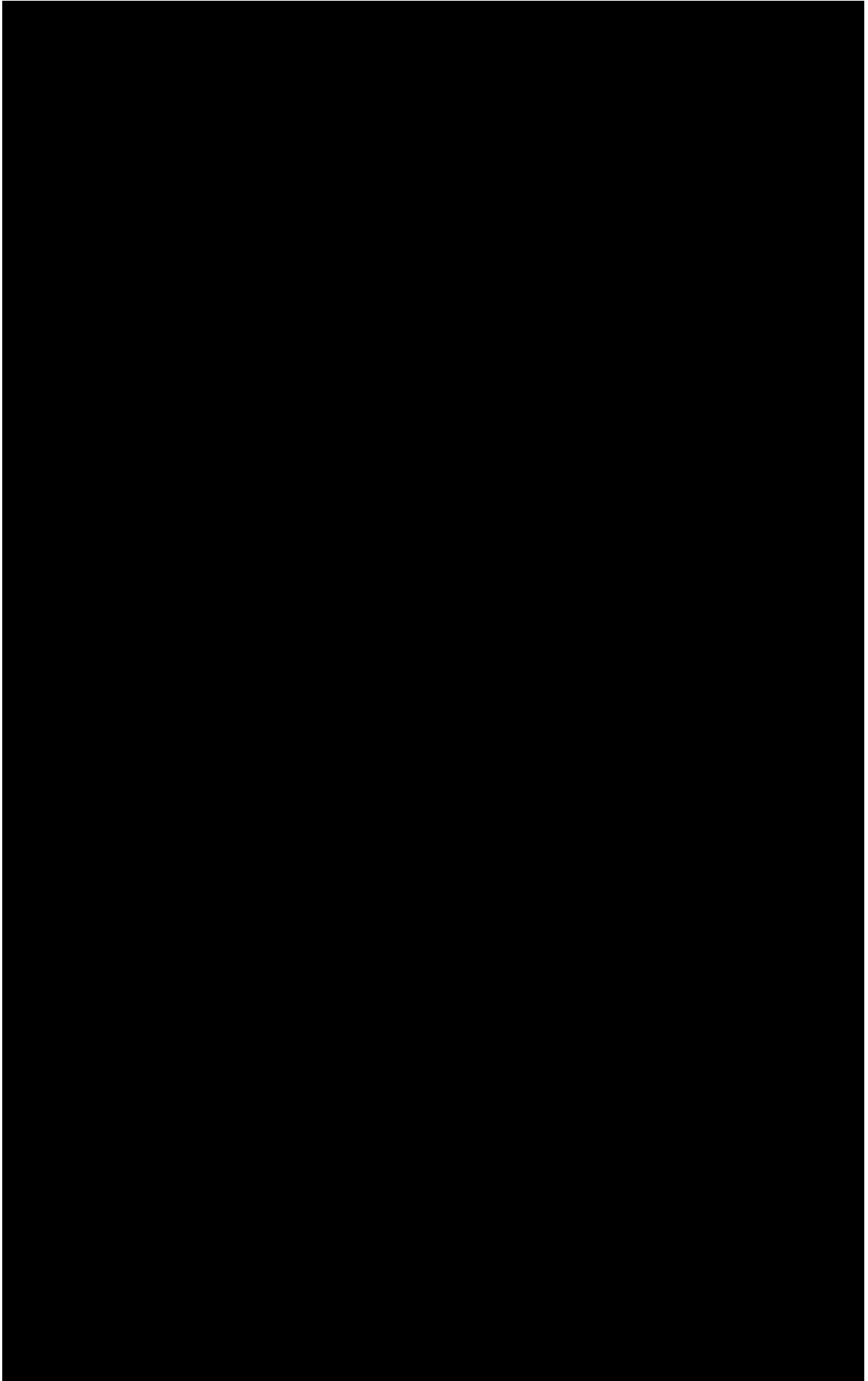
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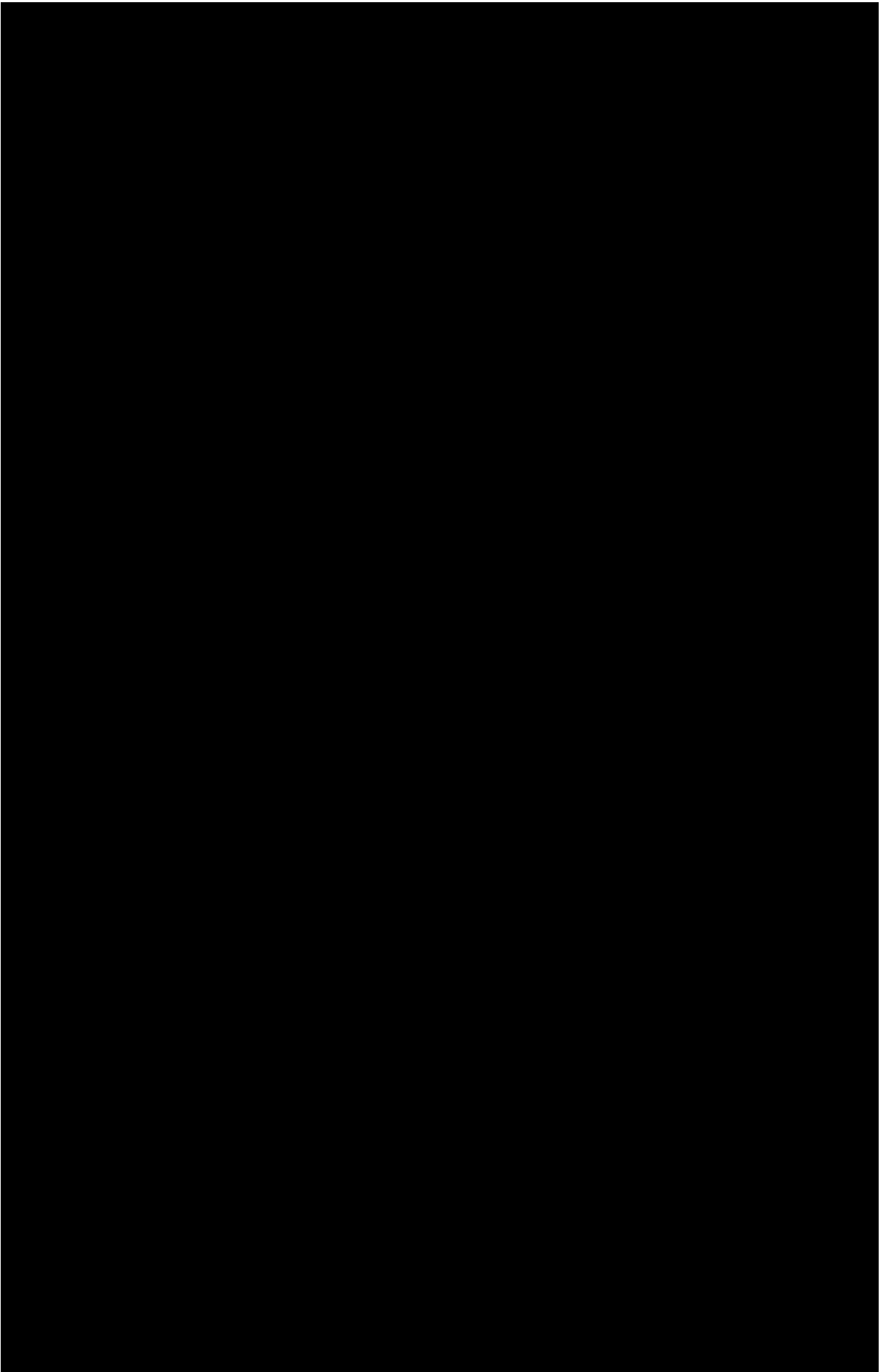
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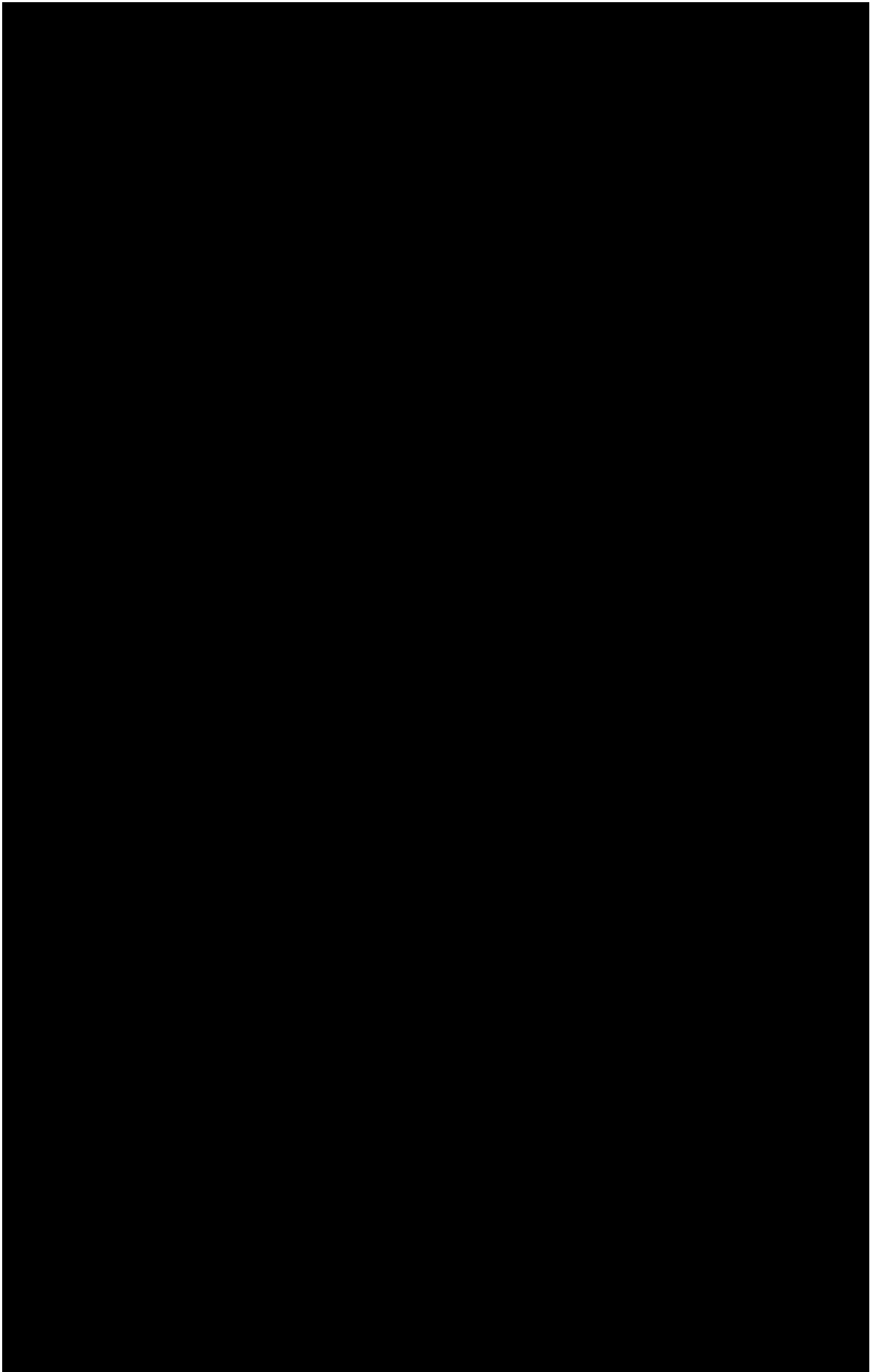
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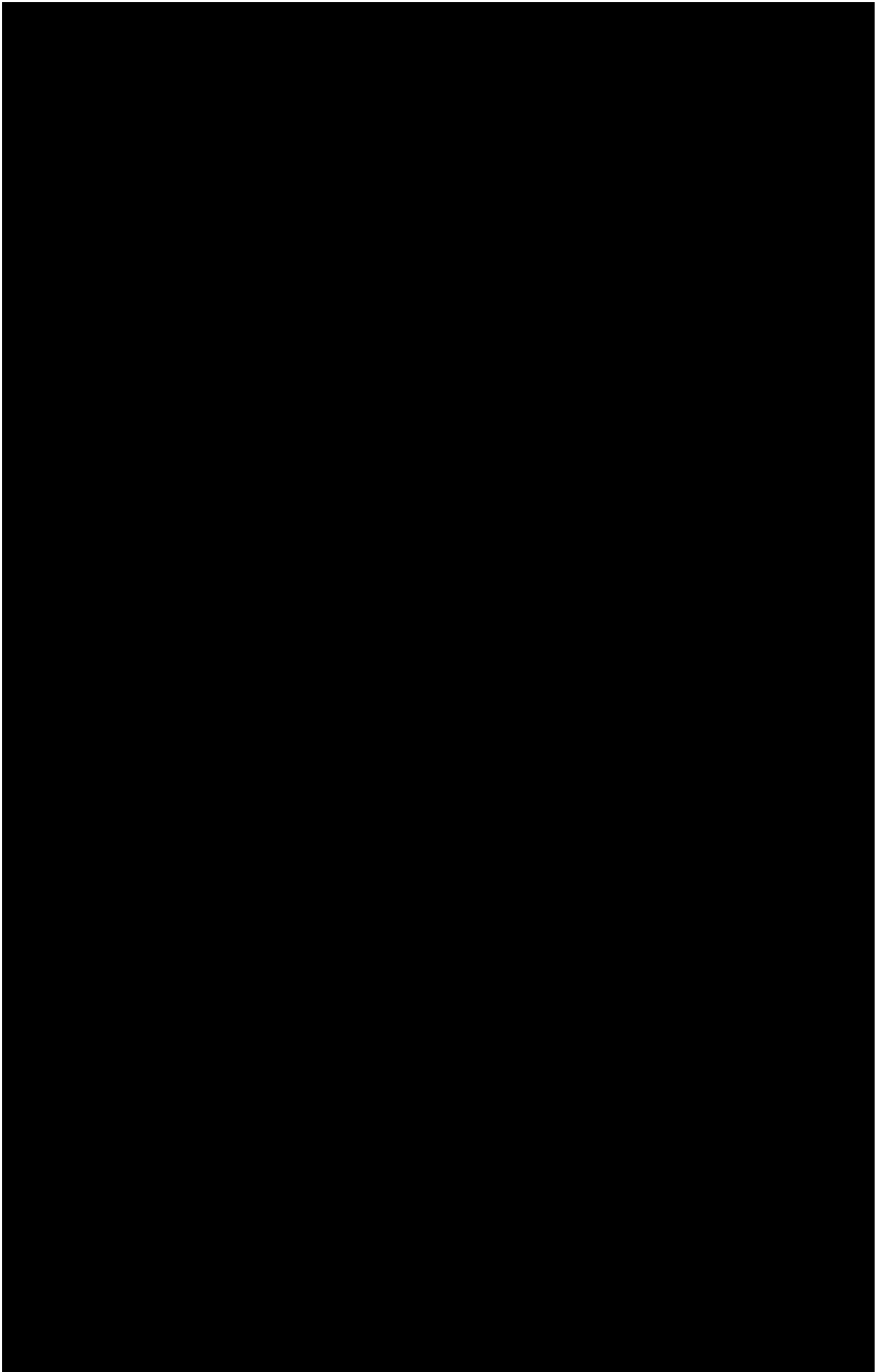
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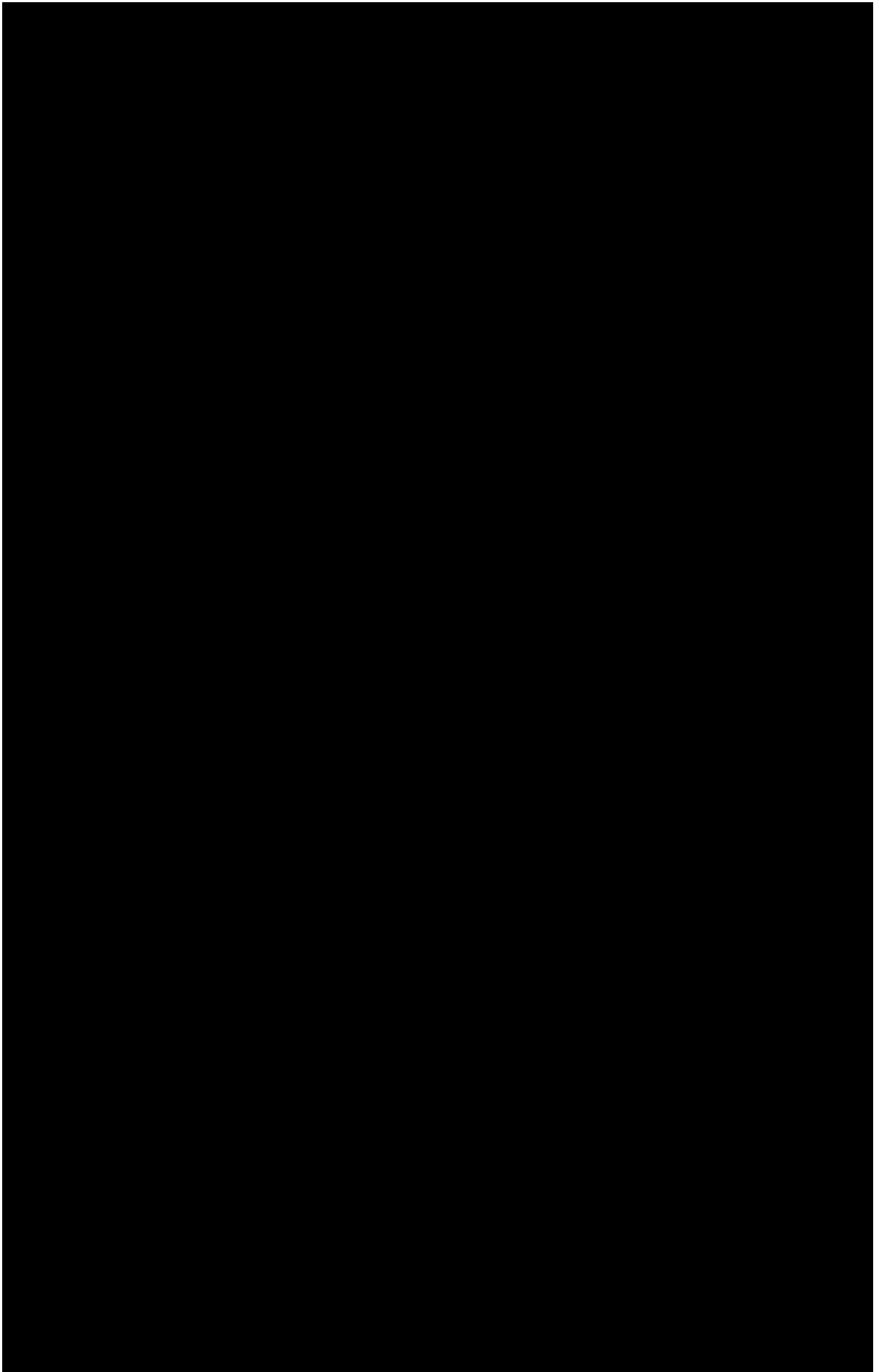
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23 MR. ELSNER: Why don't we take a quick break and
24 I'll find that document.

1 THE VIDEOGRAPHER: We are off the record at
2 10:56 a.m.

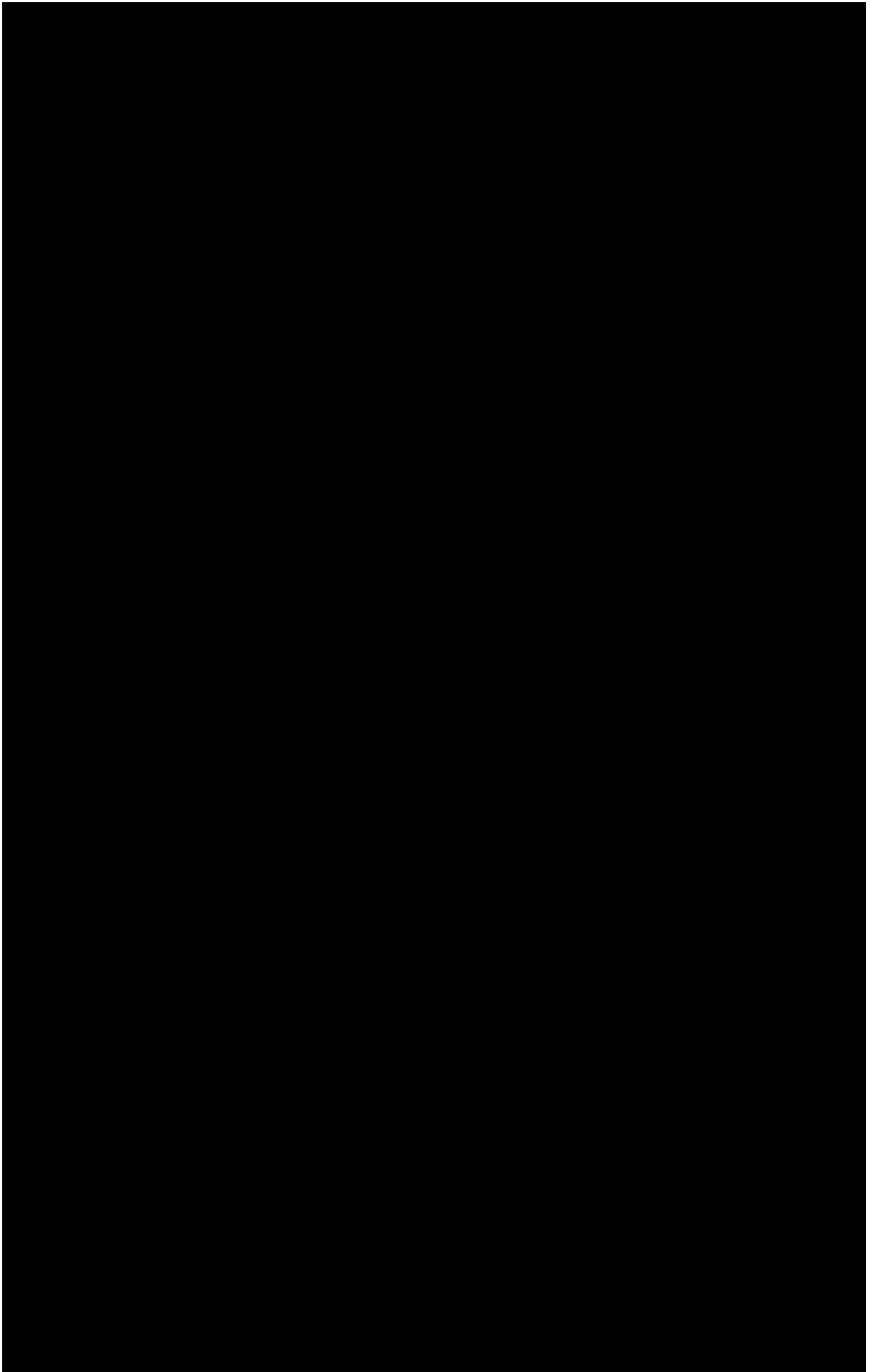
3 (WHEREUPON, a recess was had
4 from 10:56 to 11:09 a.m.)

5 THE VIDEOGRAPHER: We are back on the record at
6 11:09 a.m.

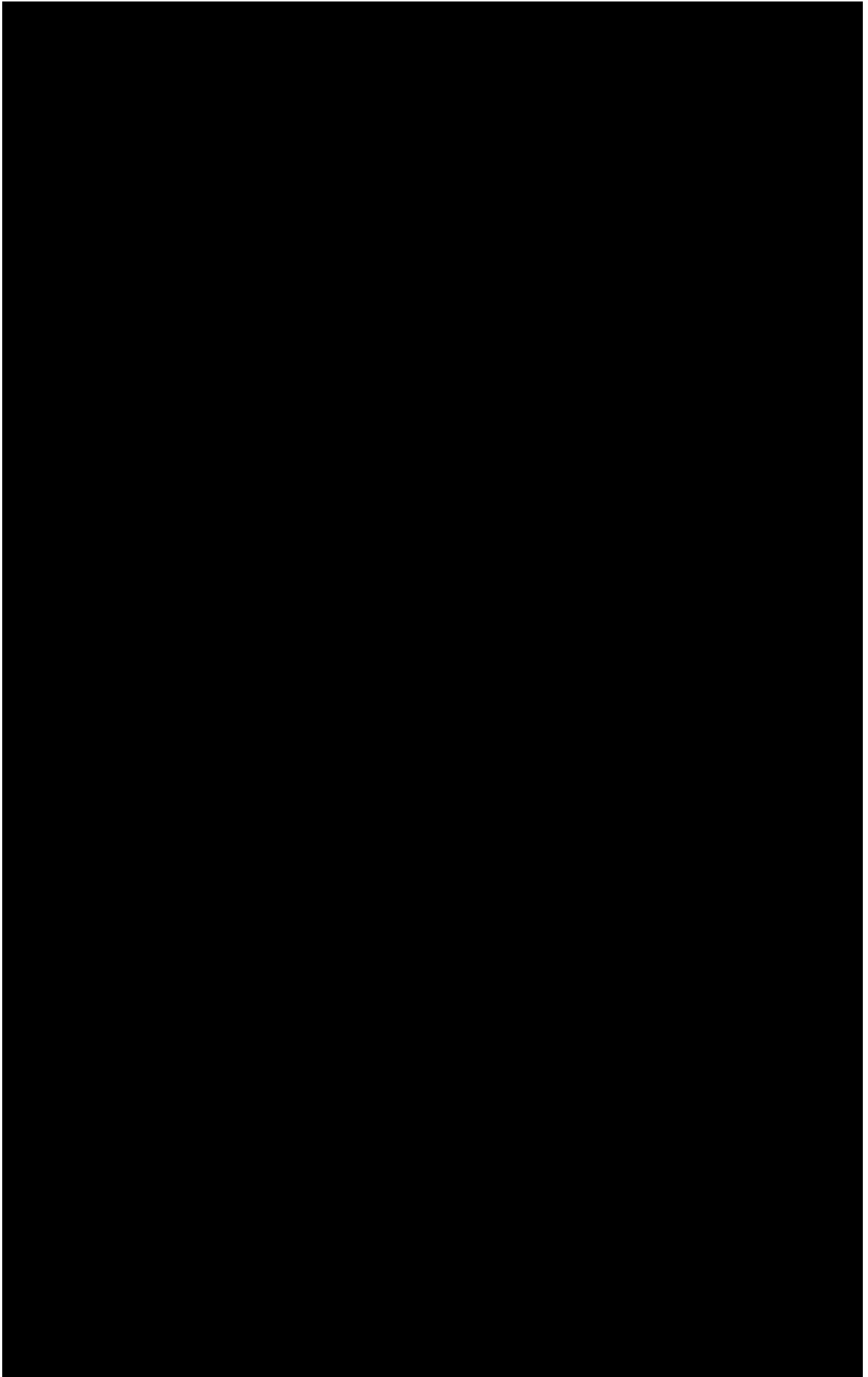
7 BY MR. ELSNER:

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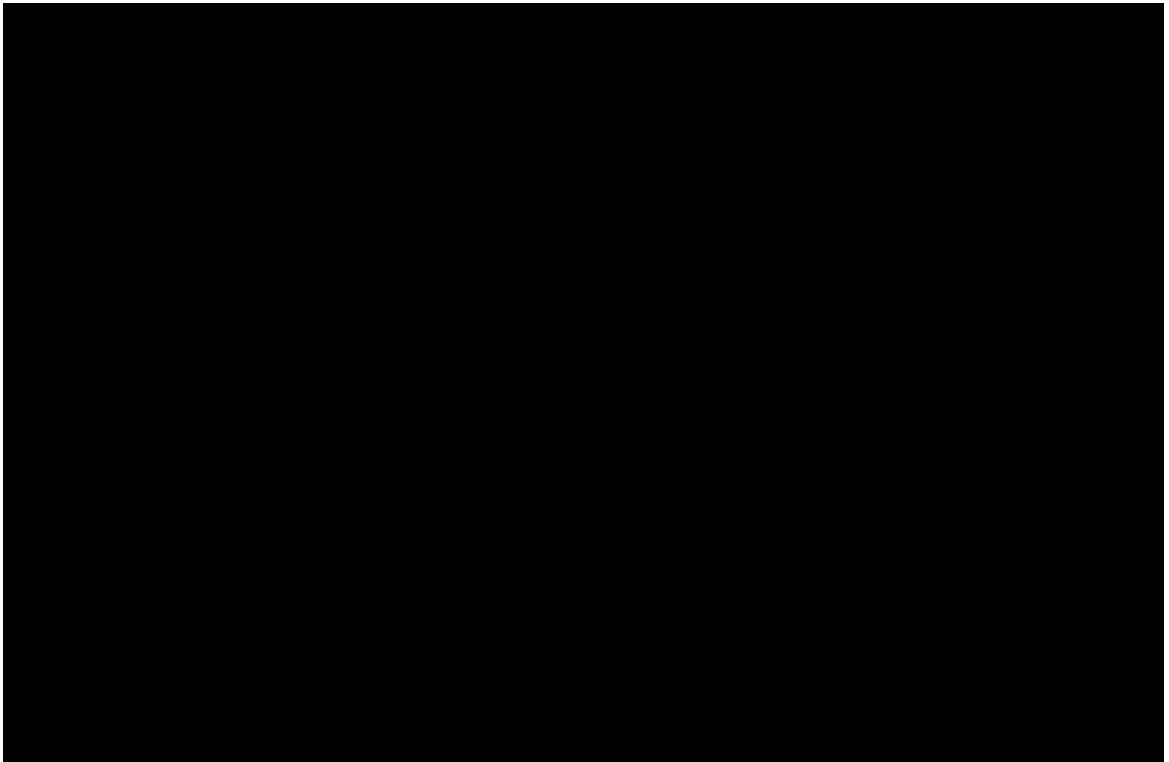
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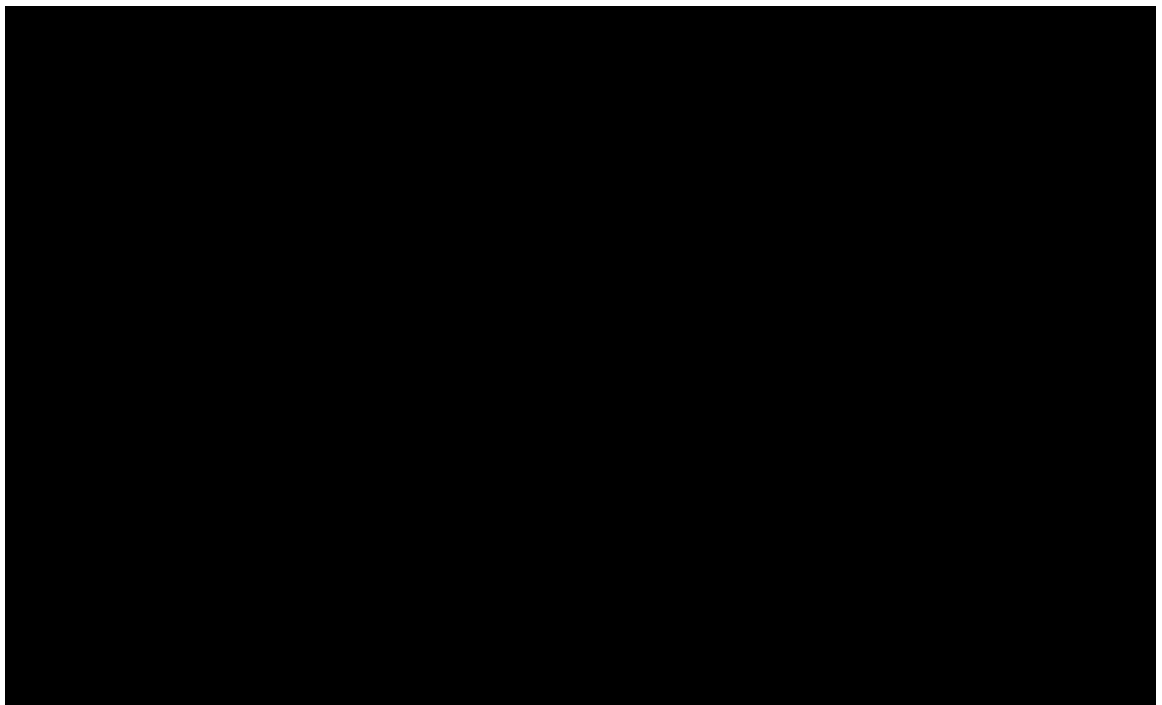


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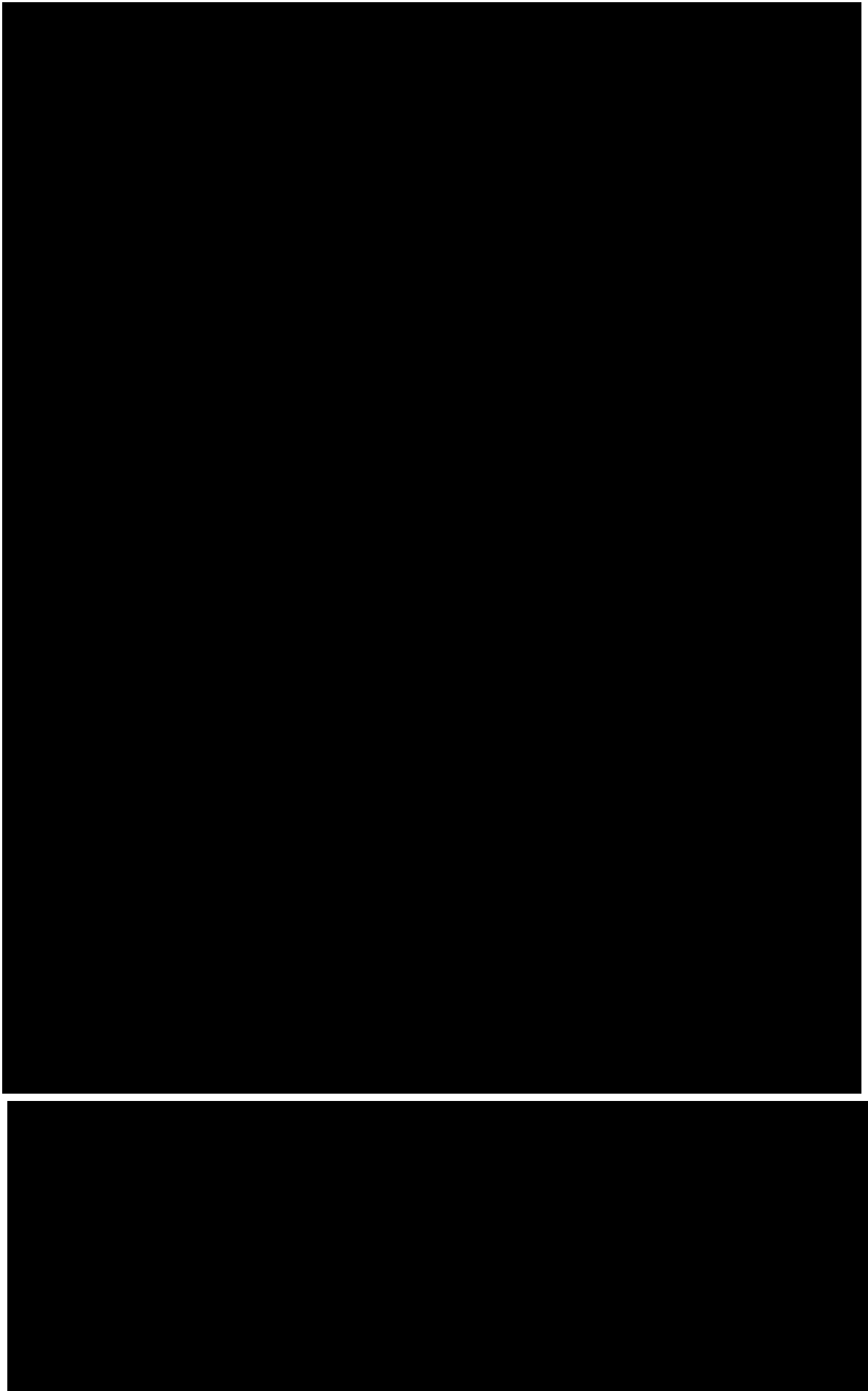


(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 11, for identification,
as of 01/24/2019.)

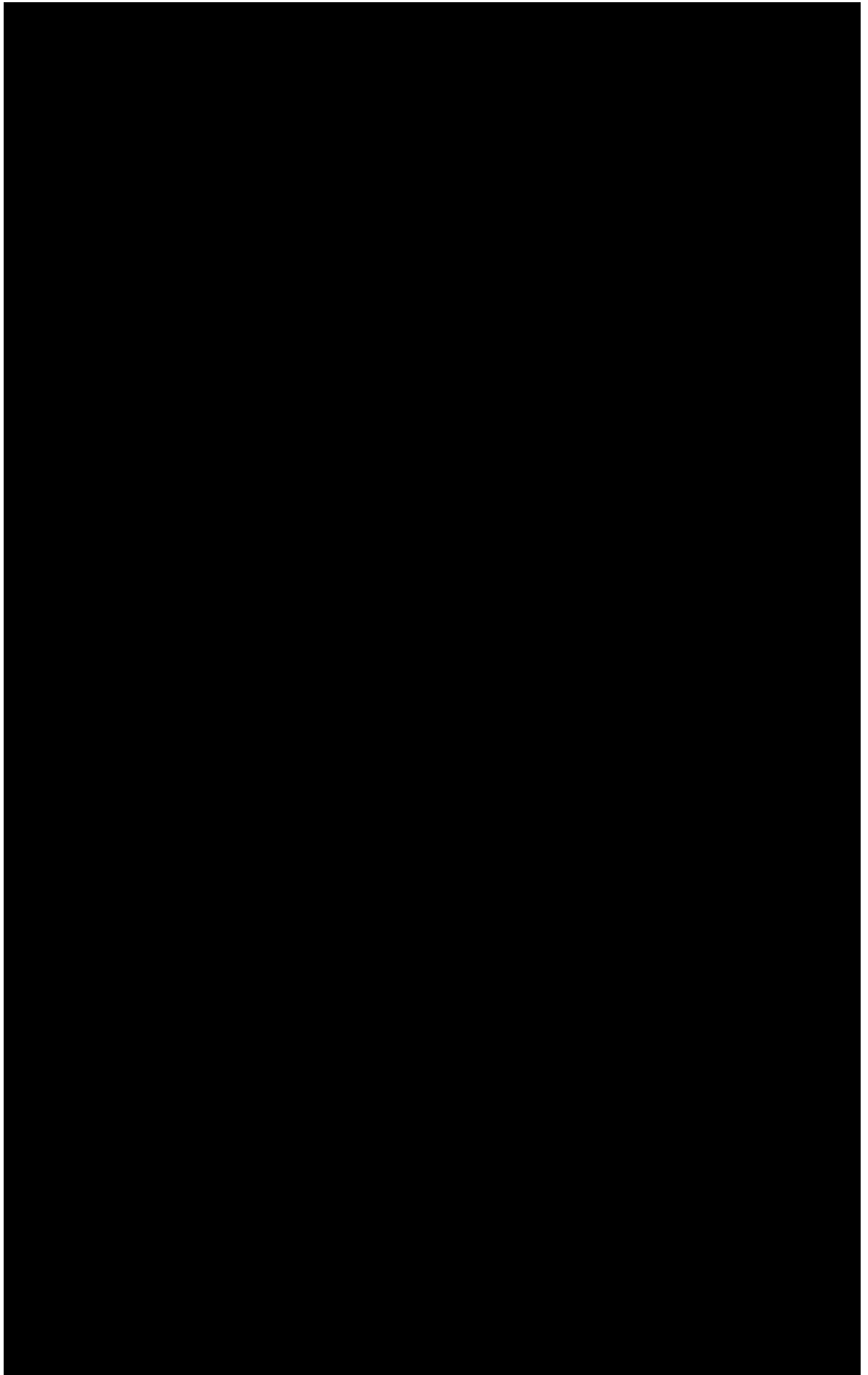
BY MR. ELSNER:



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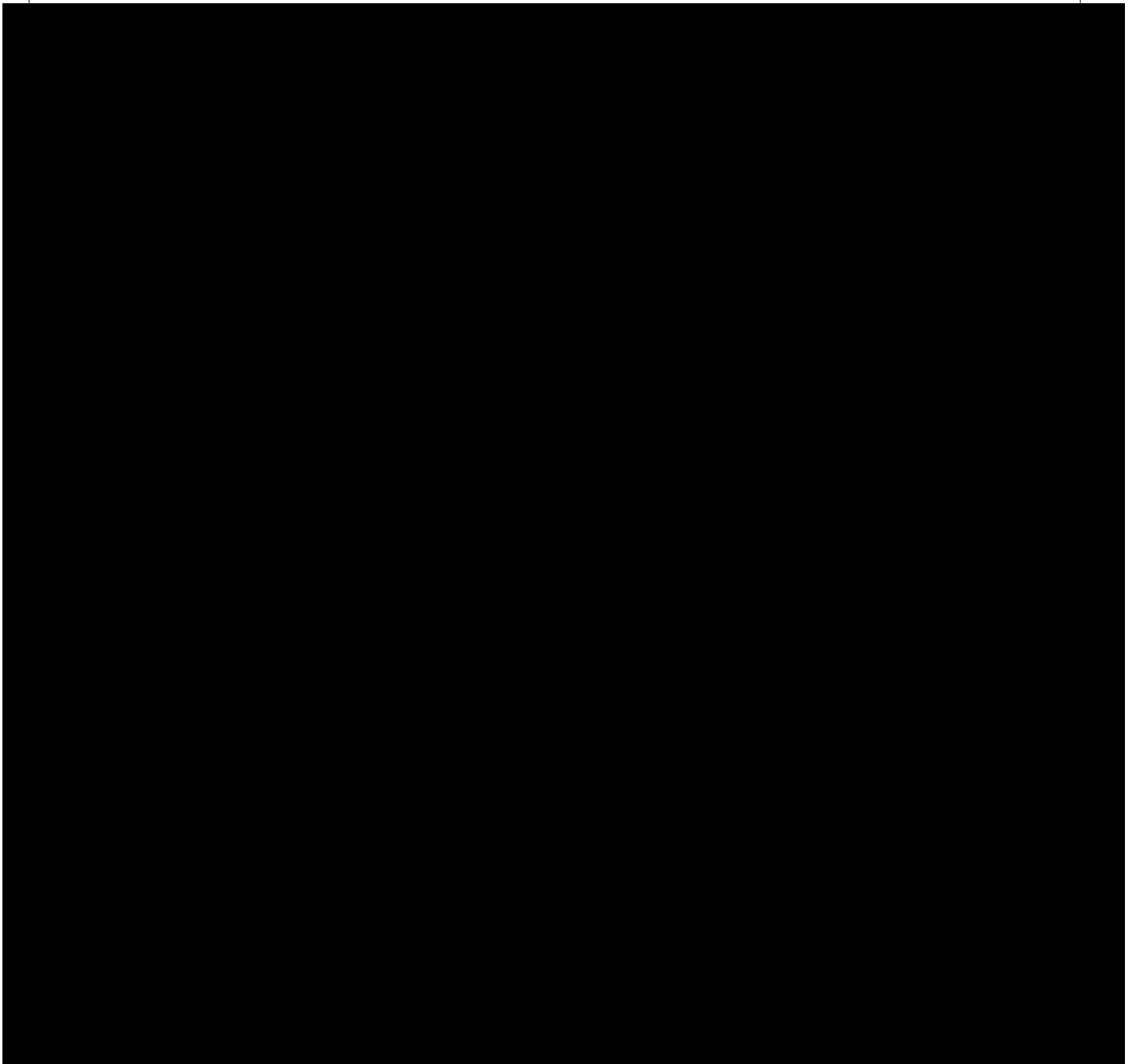


4 Q. Okay. So this report lets you compare how
5 many was shipped versus how many was dispensed, right?

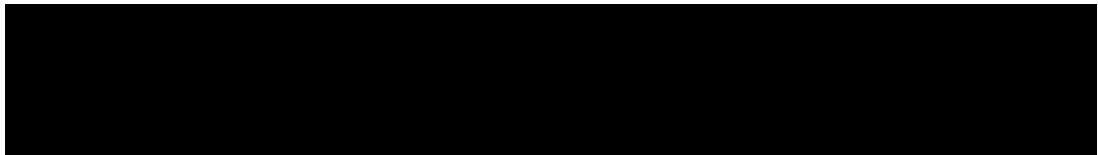
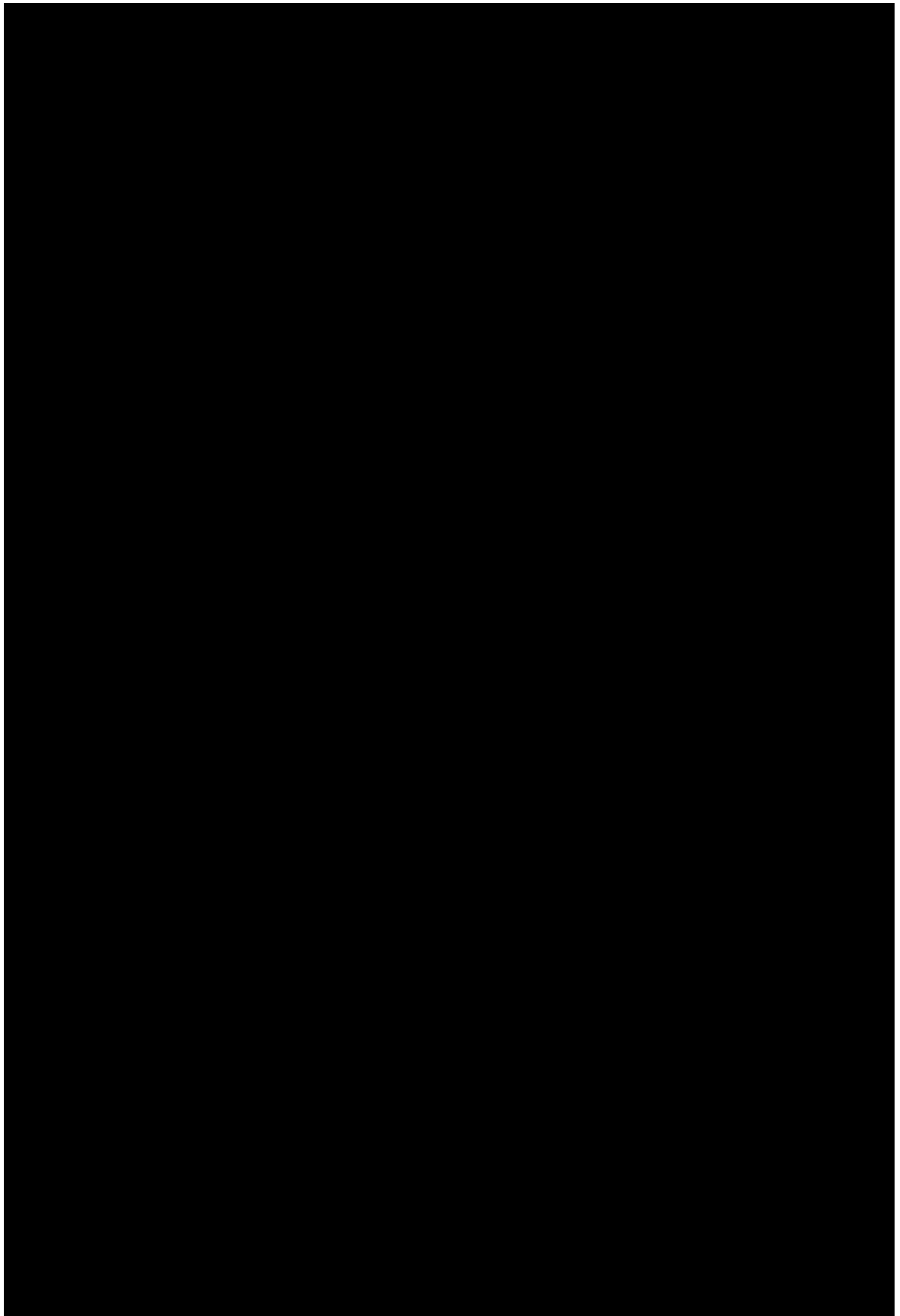
6 A. Correct.

7 Q. Does that sound right?

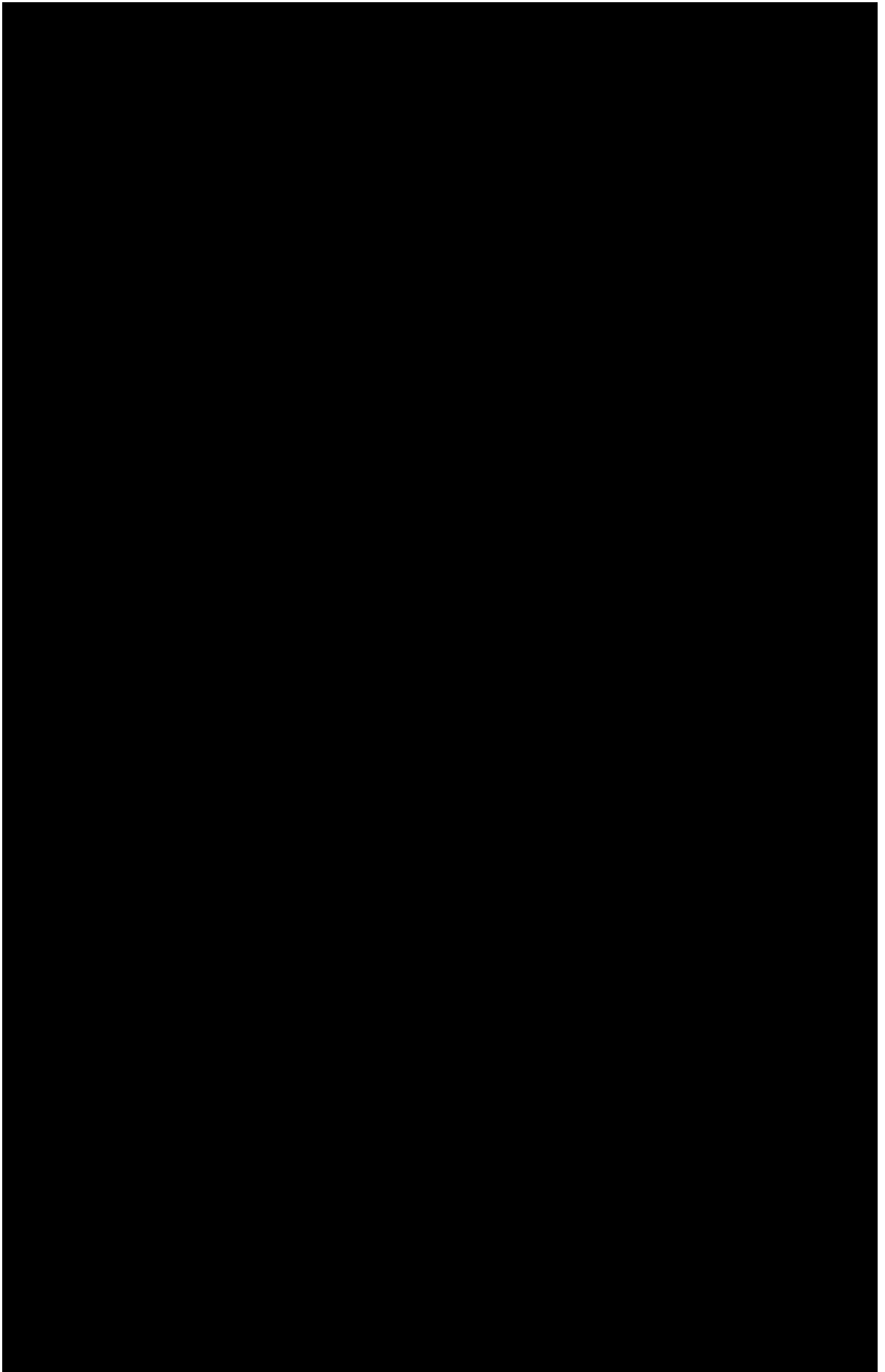
8 A. Yeah.



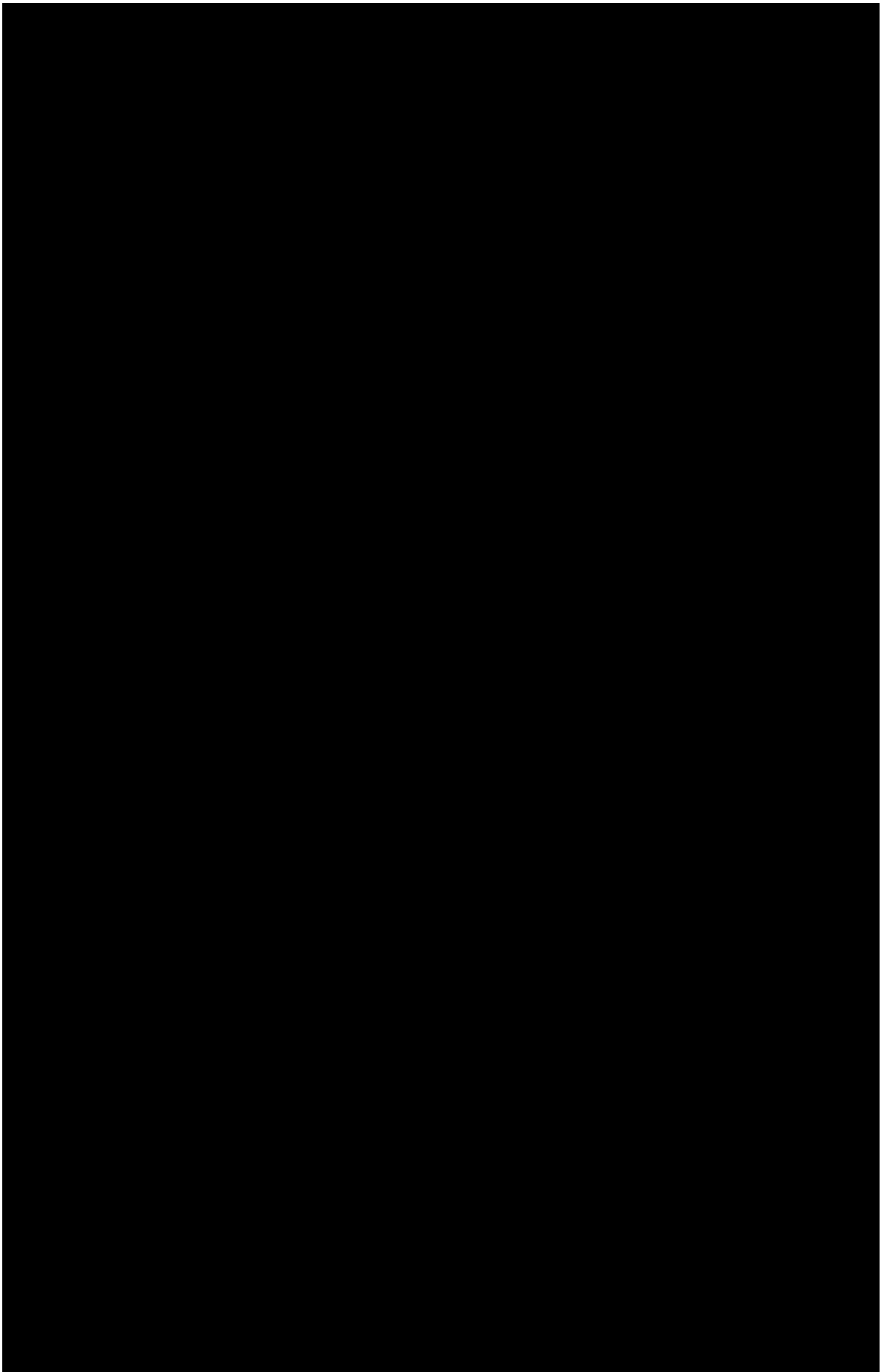
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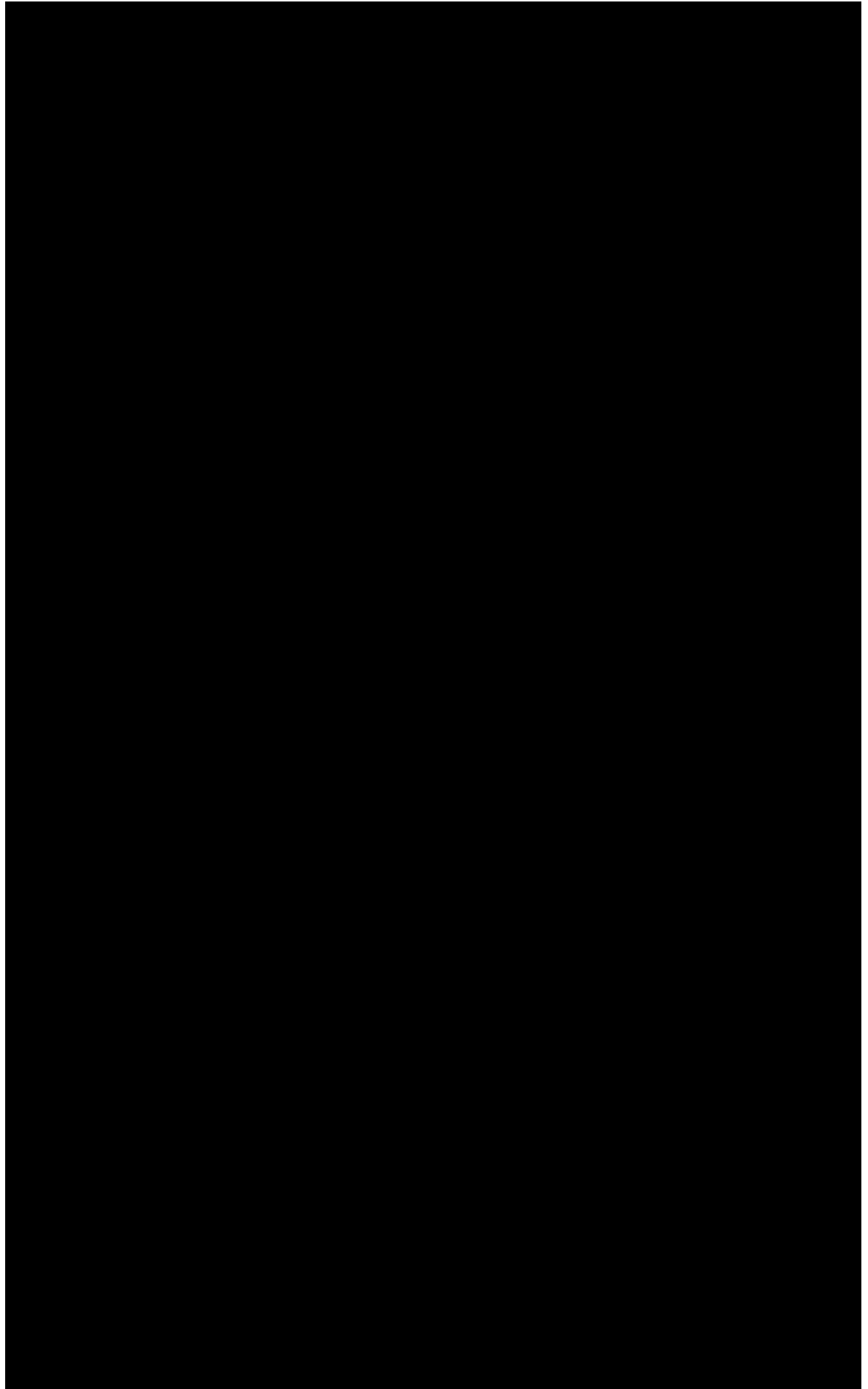
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1 Q. Let me mark this as Exhibit 12.

2 (WHEREUPON, a certain document was

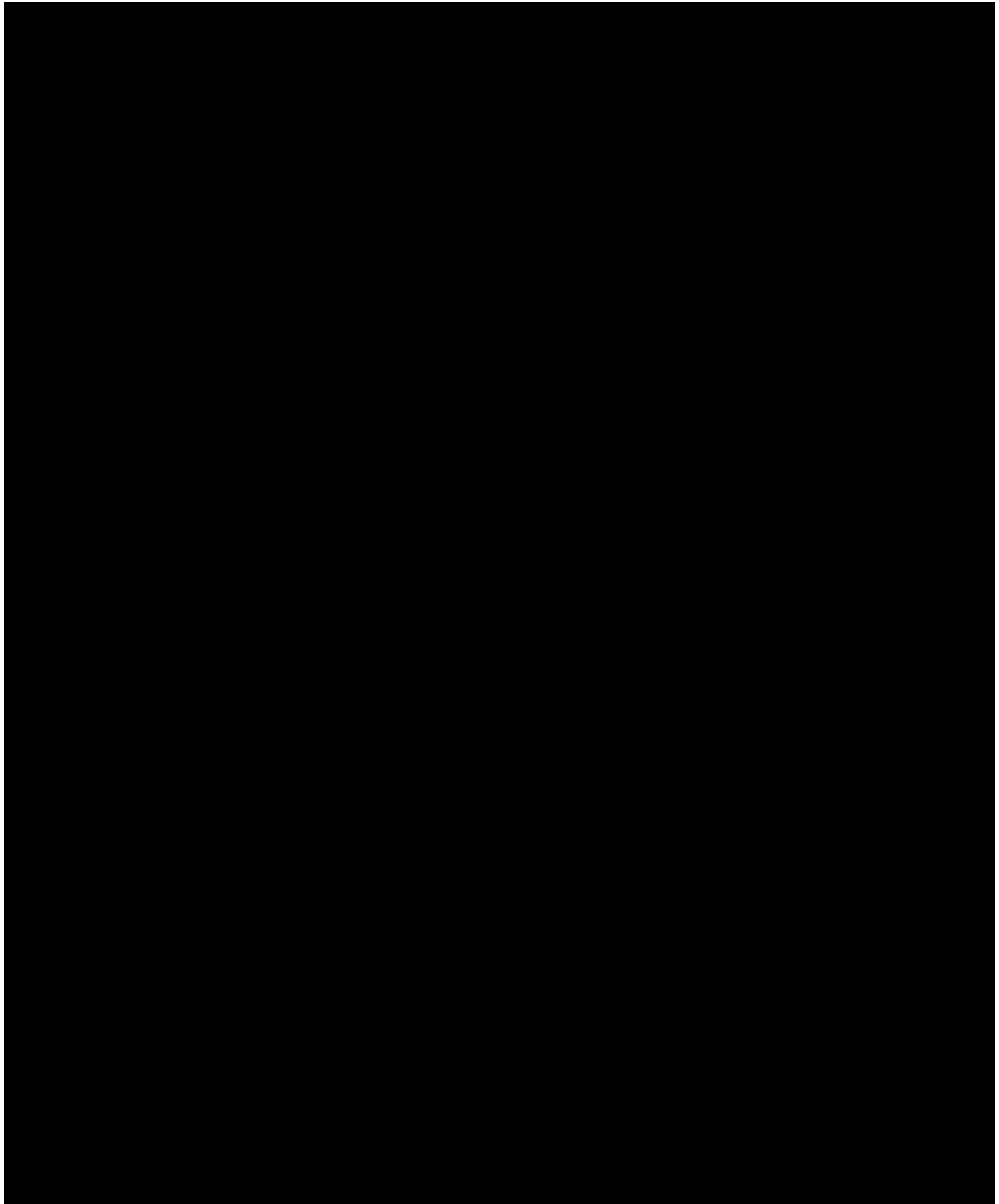
3 marked CVS - Elsner Deposition

4 Exhibit No. 12, for identification,

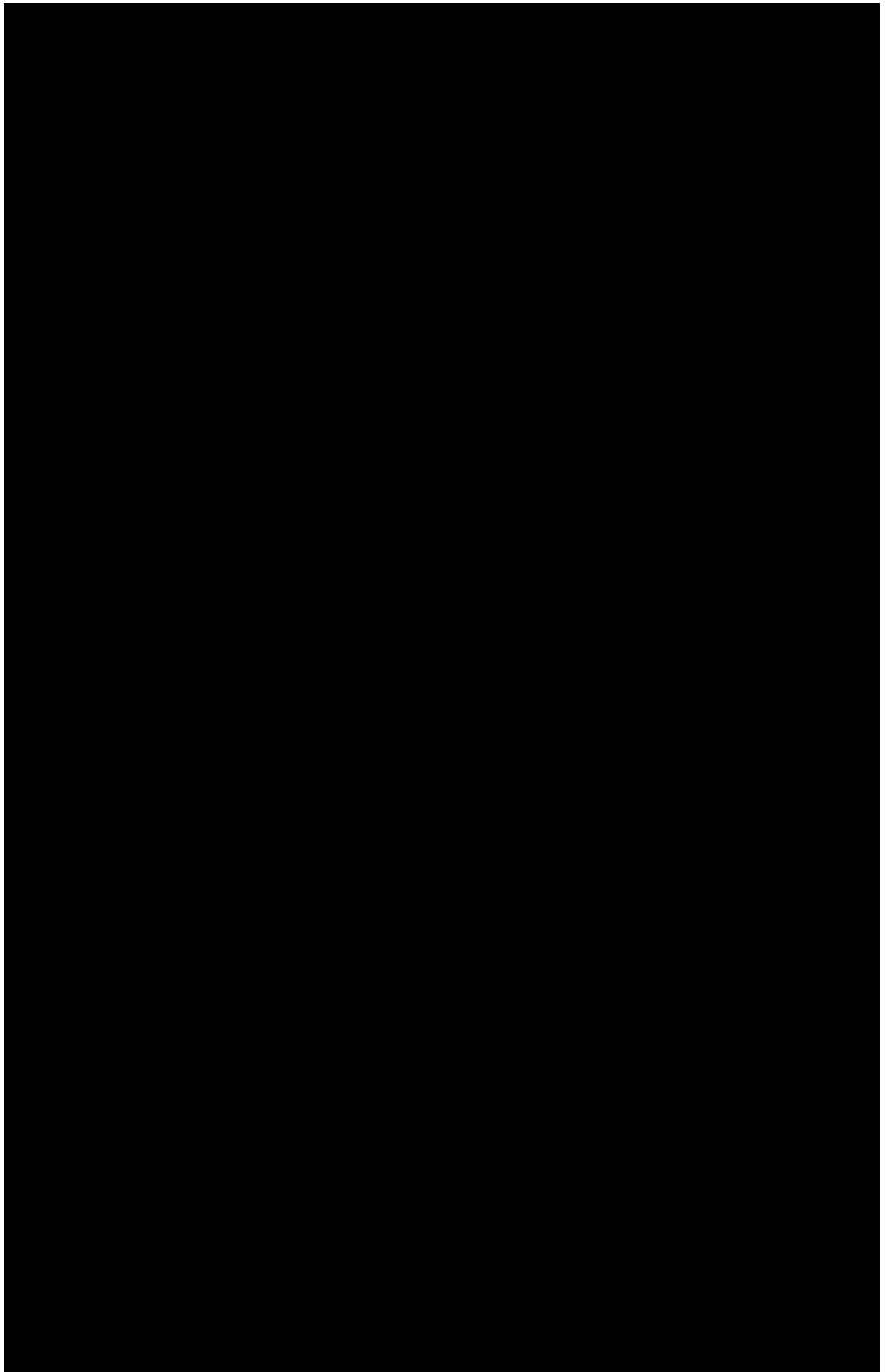
5 as of 01/24/2019.)

6 BY MR. ELSNER:

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3 Q. Okay. All right.

4 Let's go back to the flowchart then.

5 MR. CLARK: Exhibit 10.

6 THE WITNESS: Yep.

7 BY MR. ELSNER:

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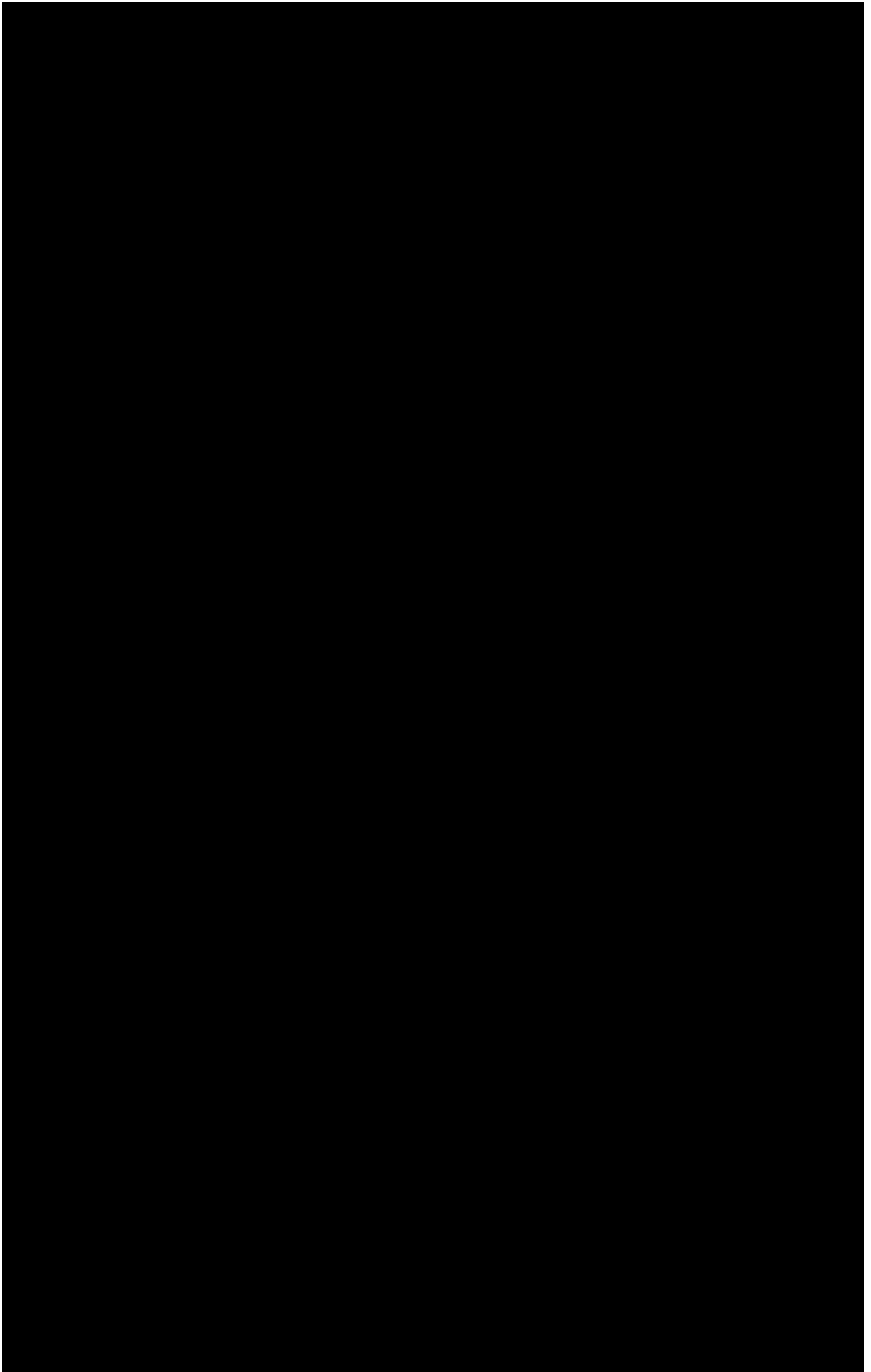
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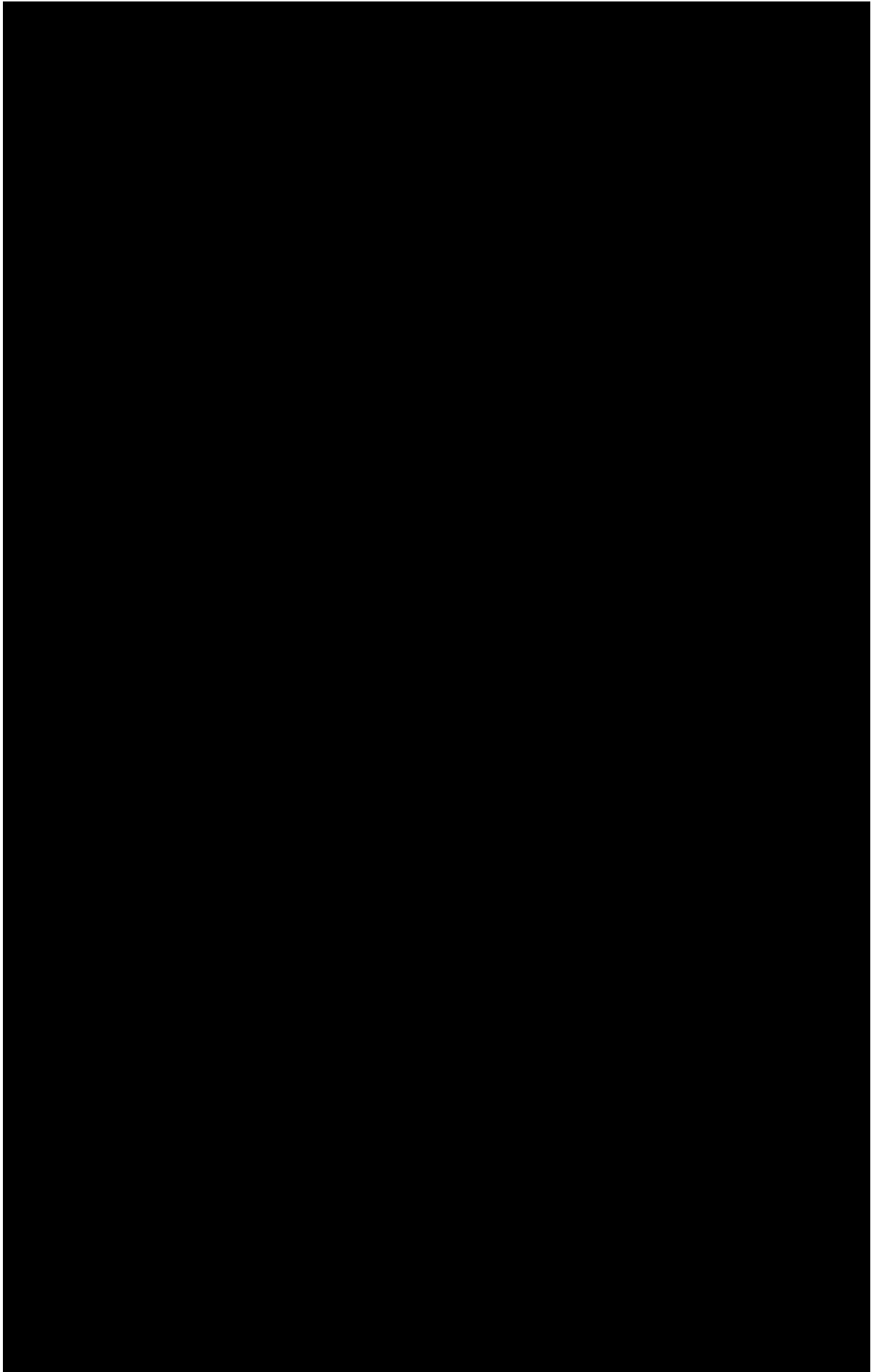
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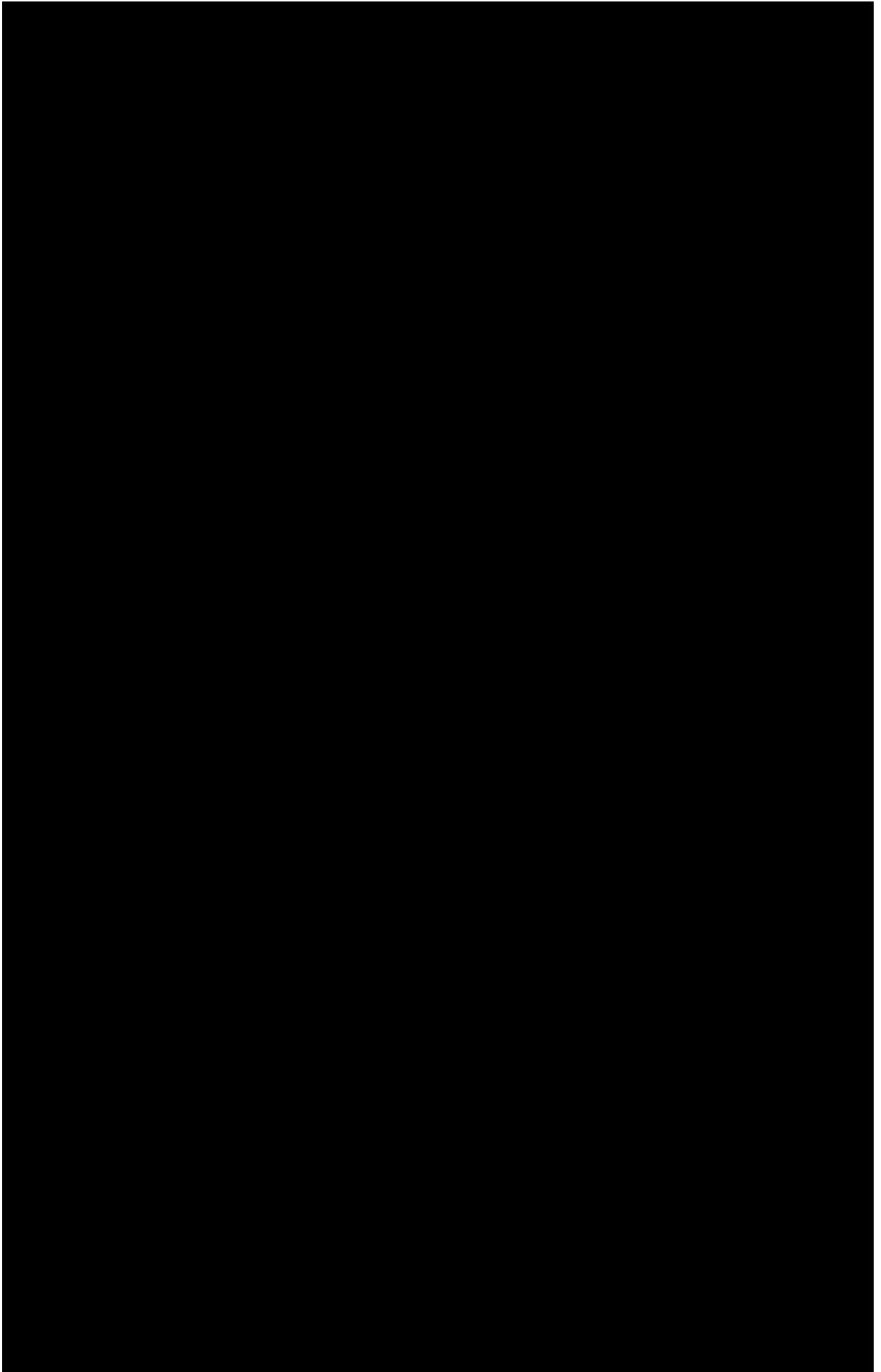
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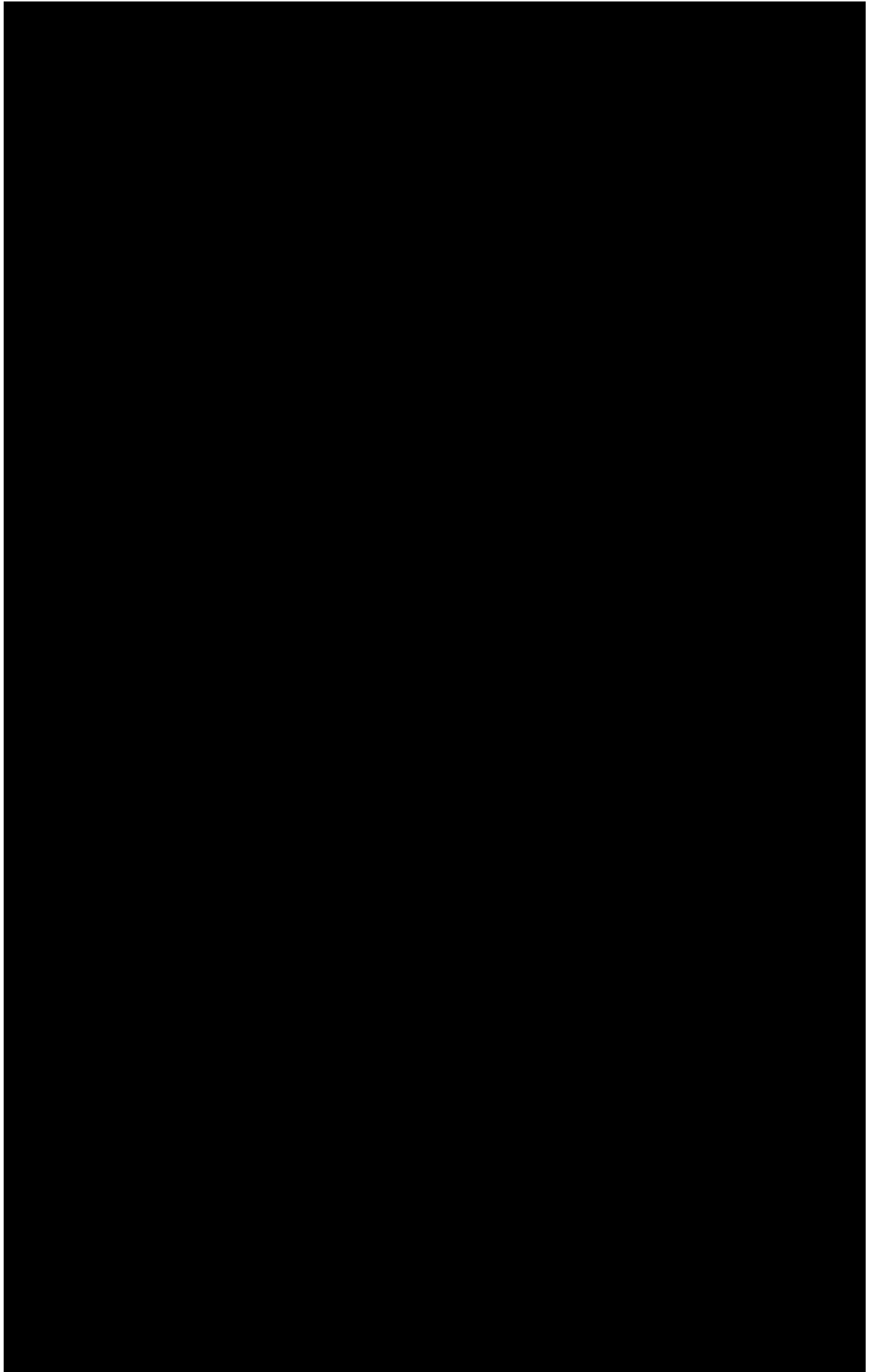
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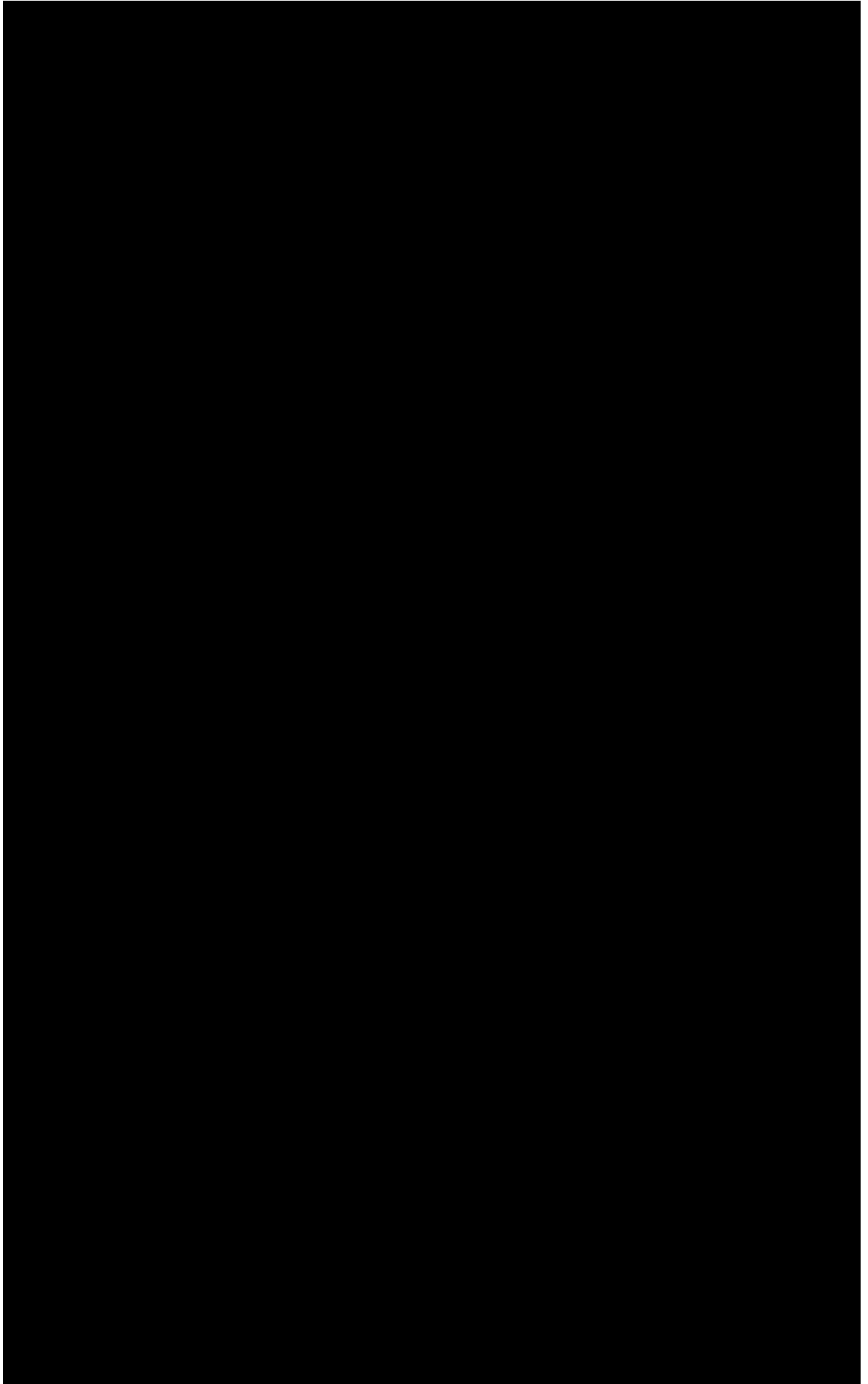
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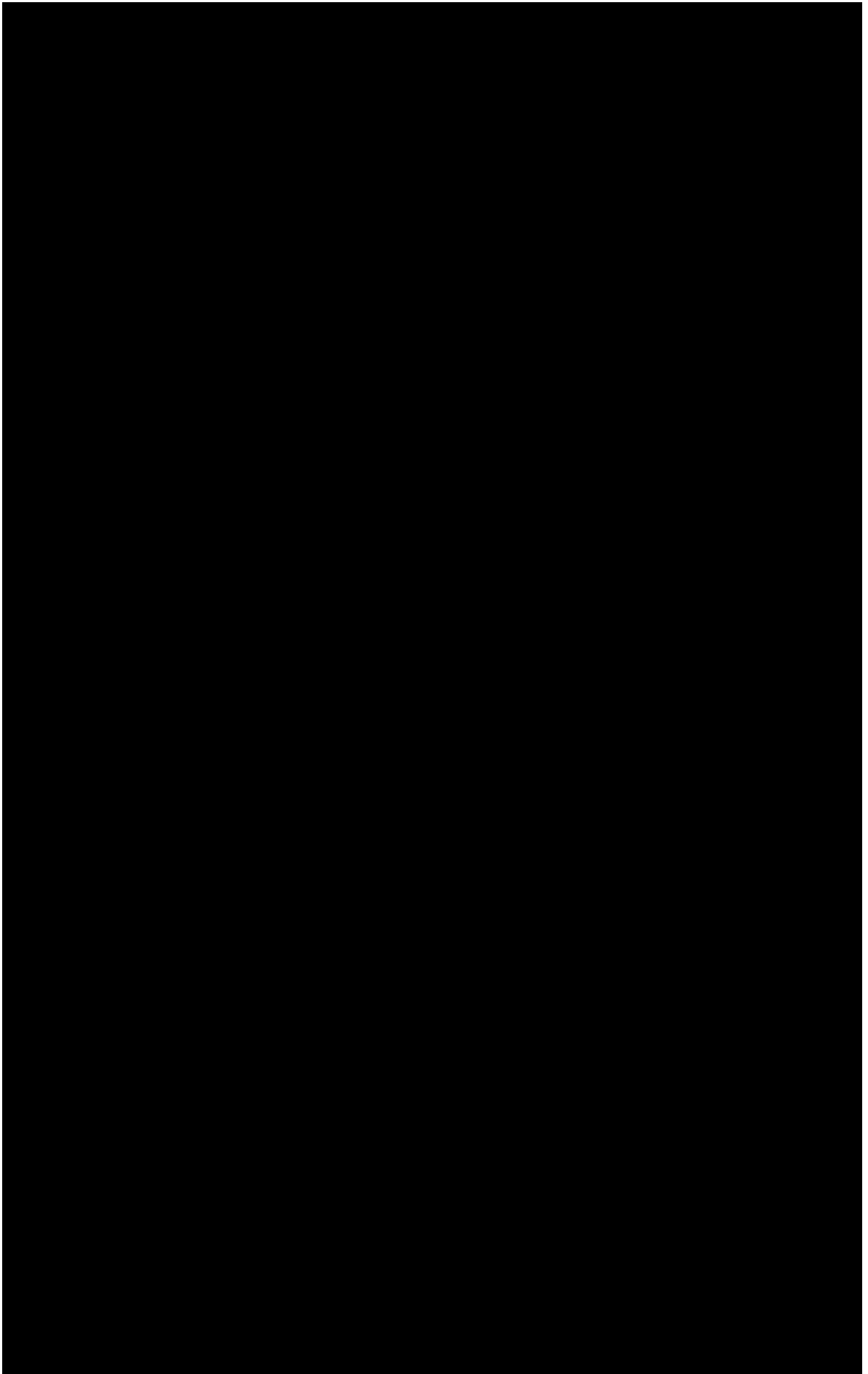
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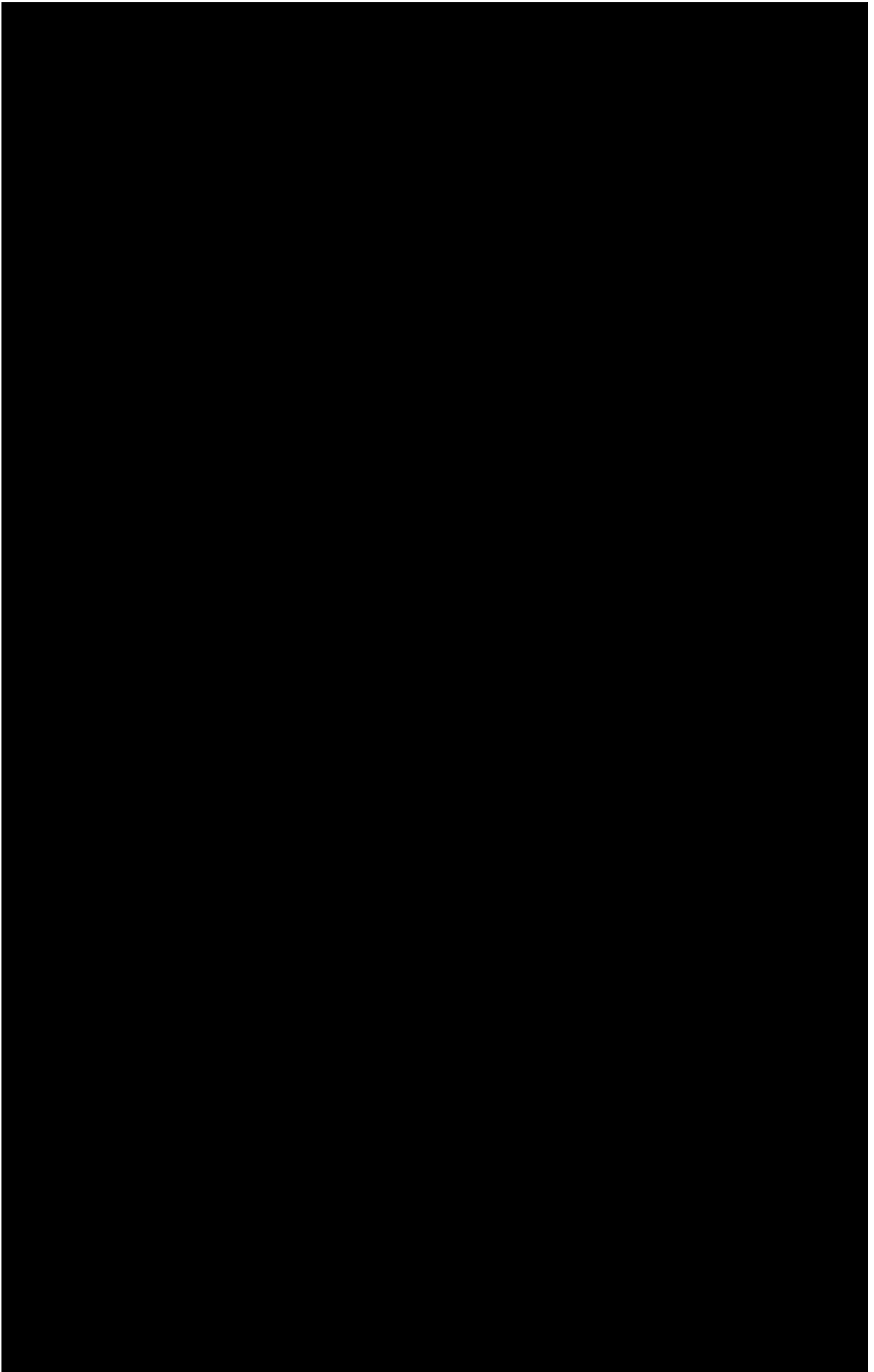
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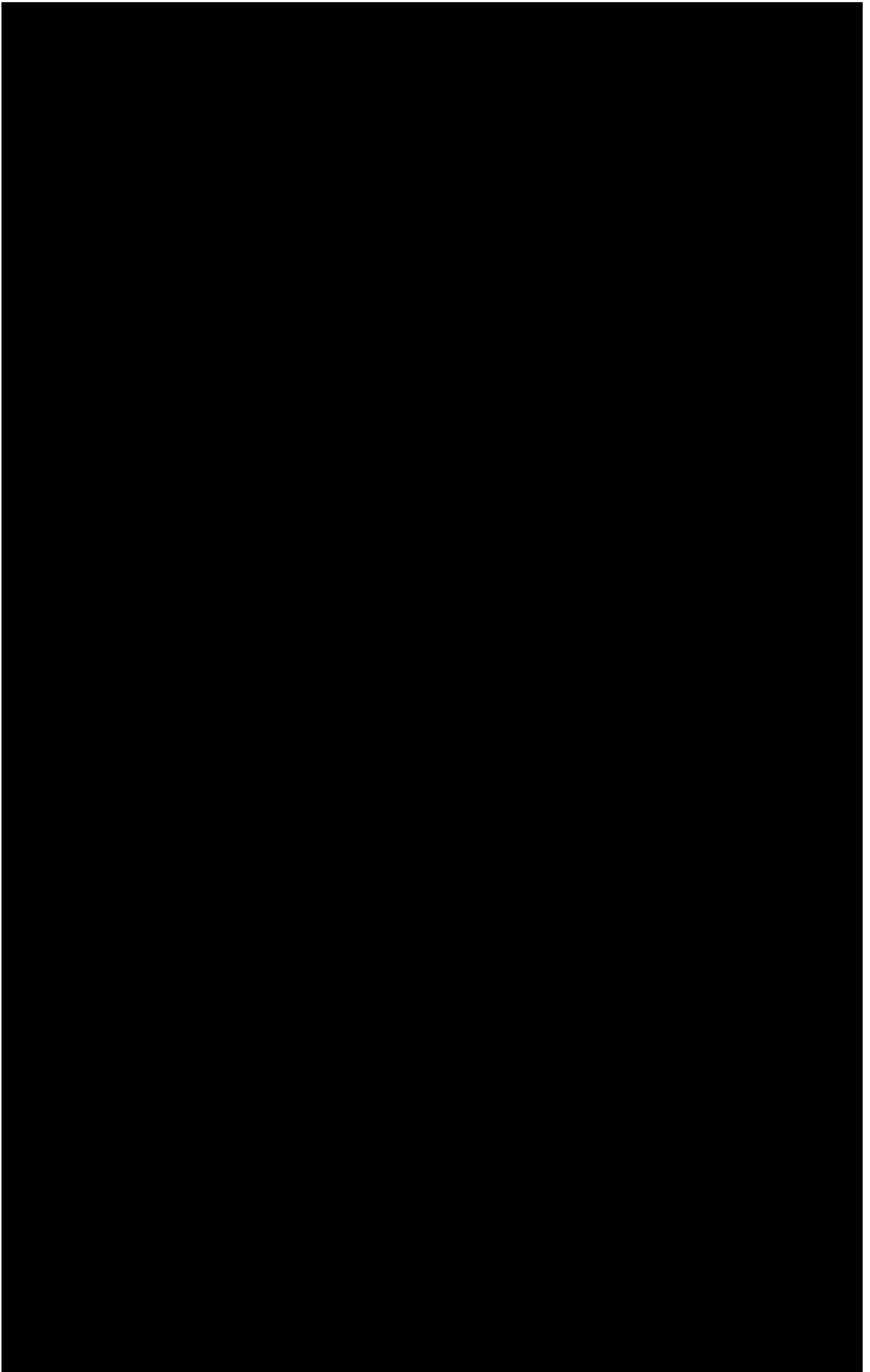
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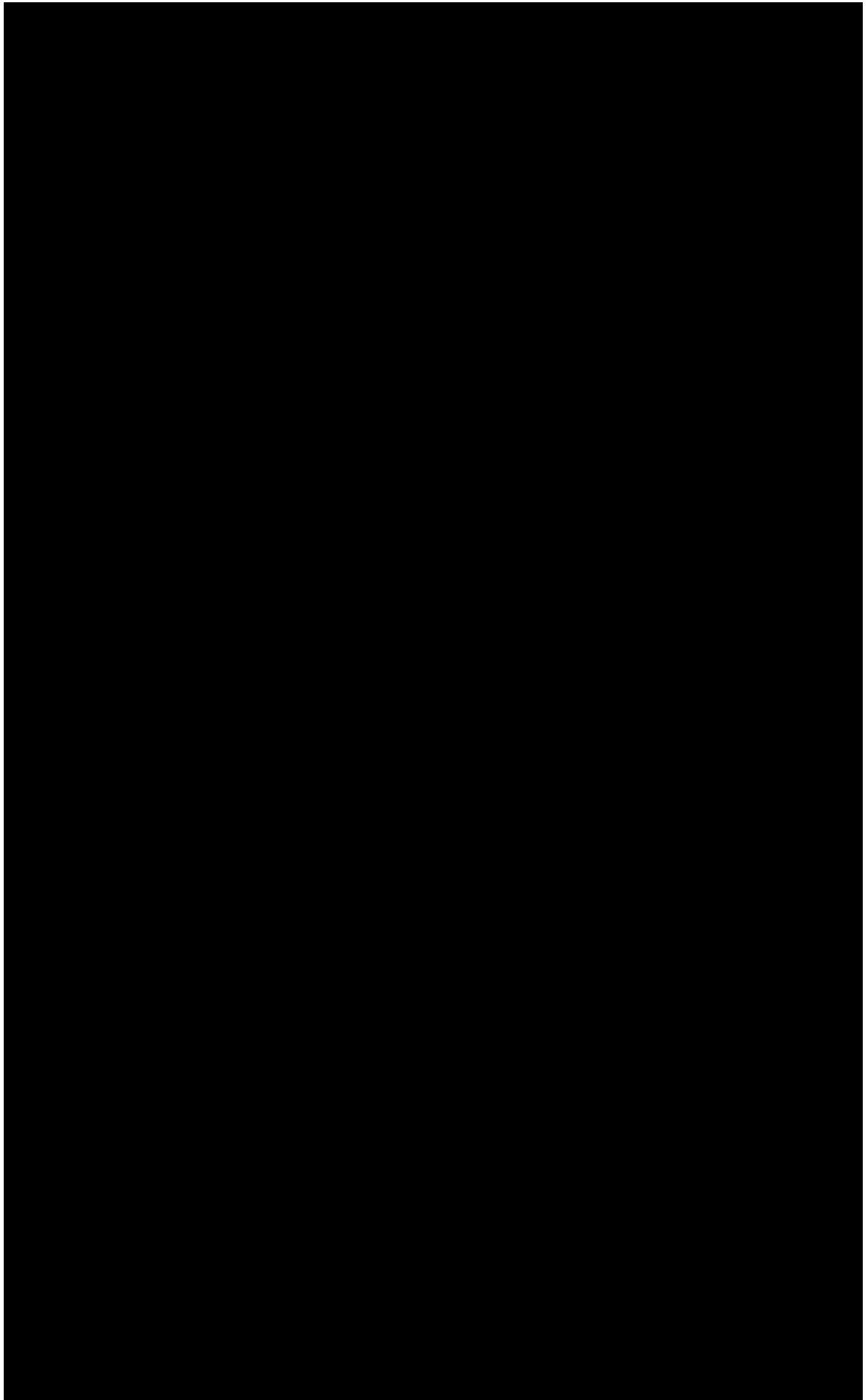
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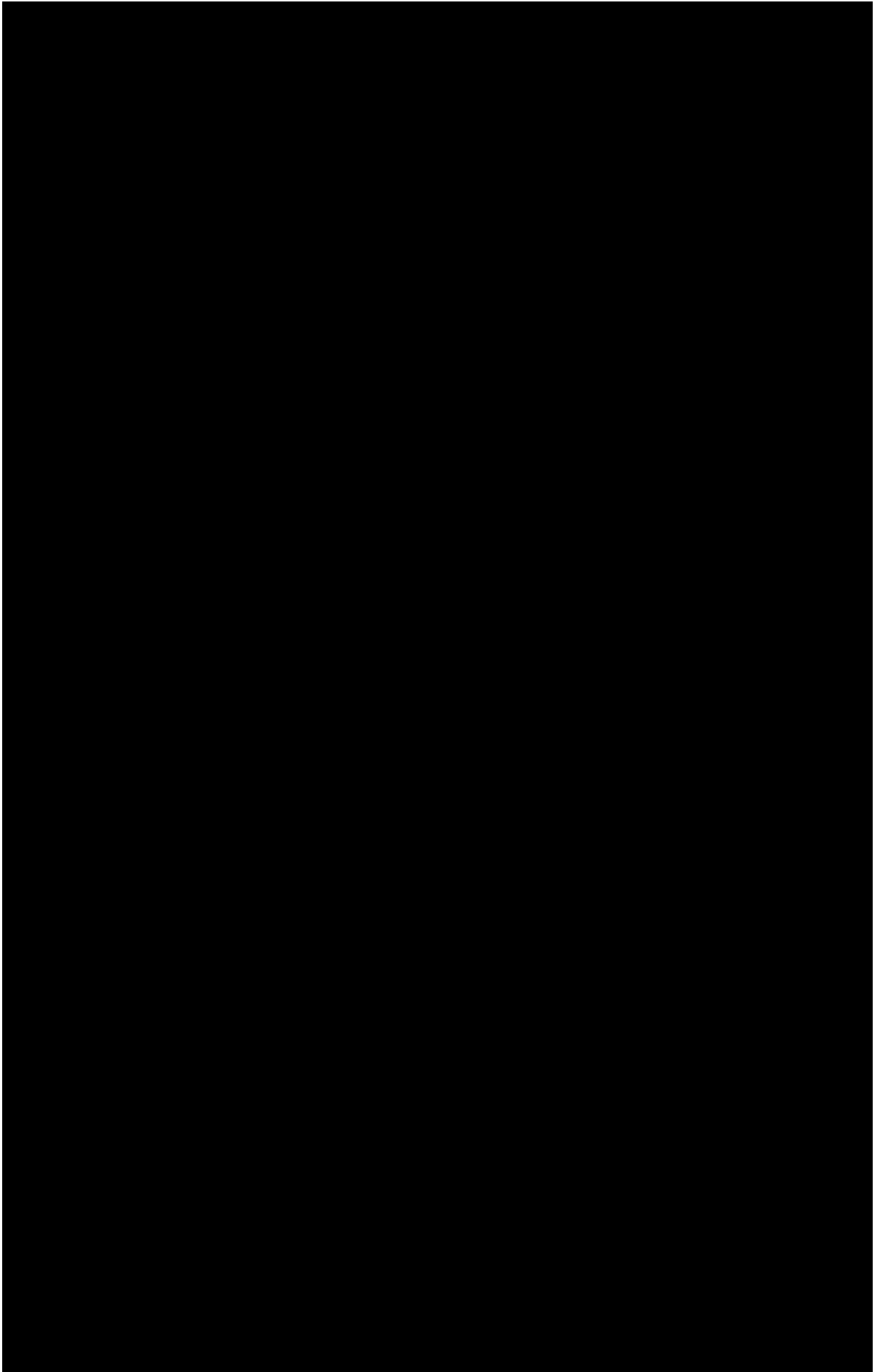
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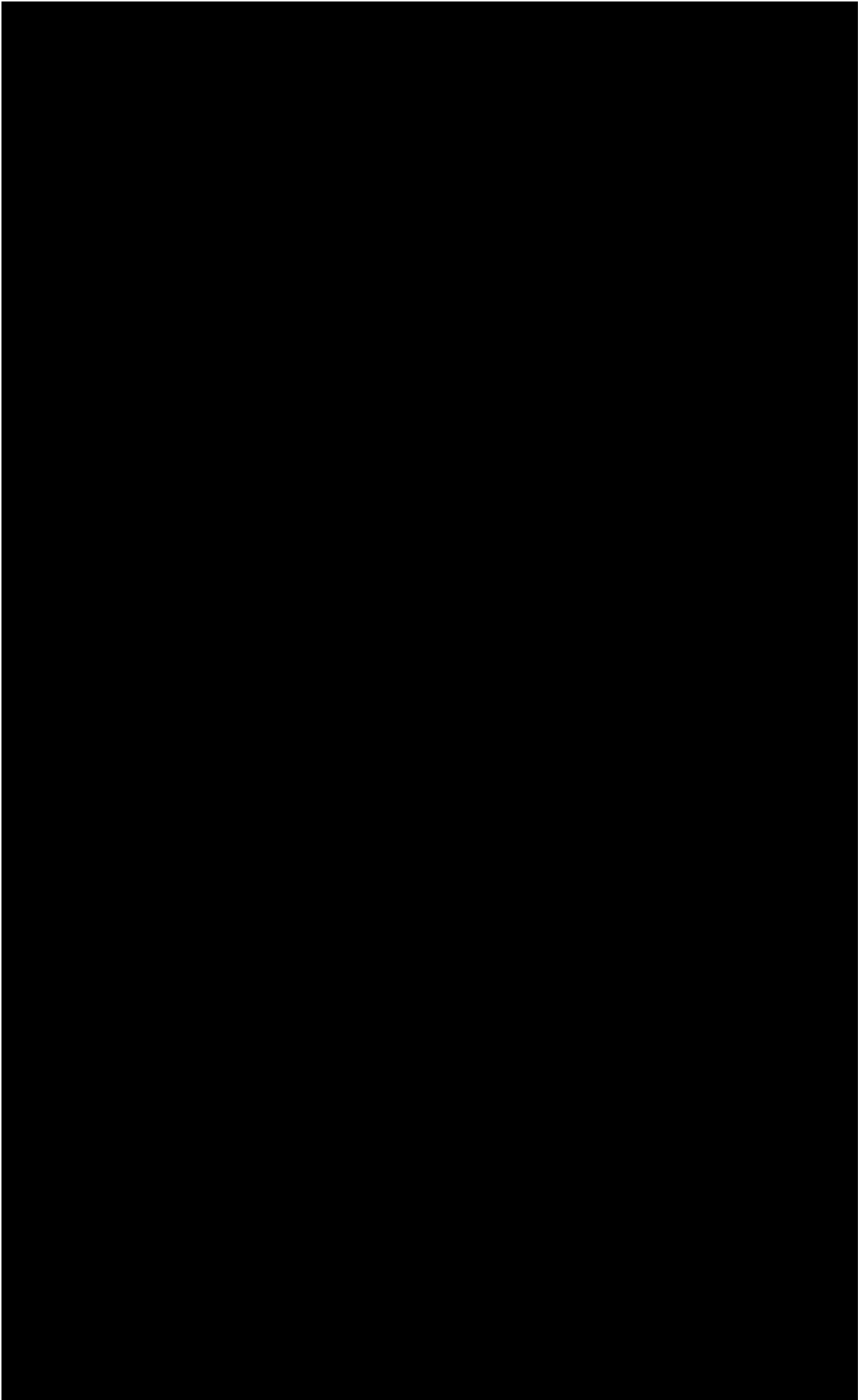
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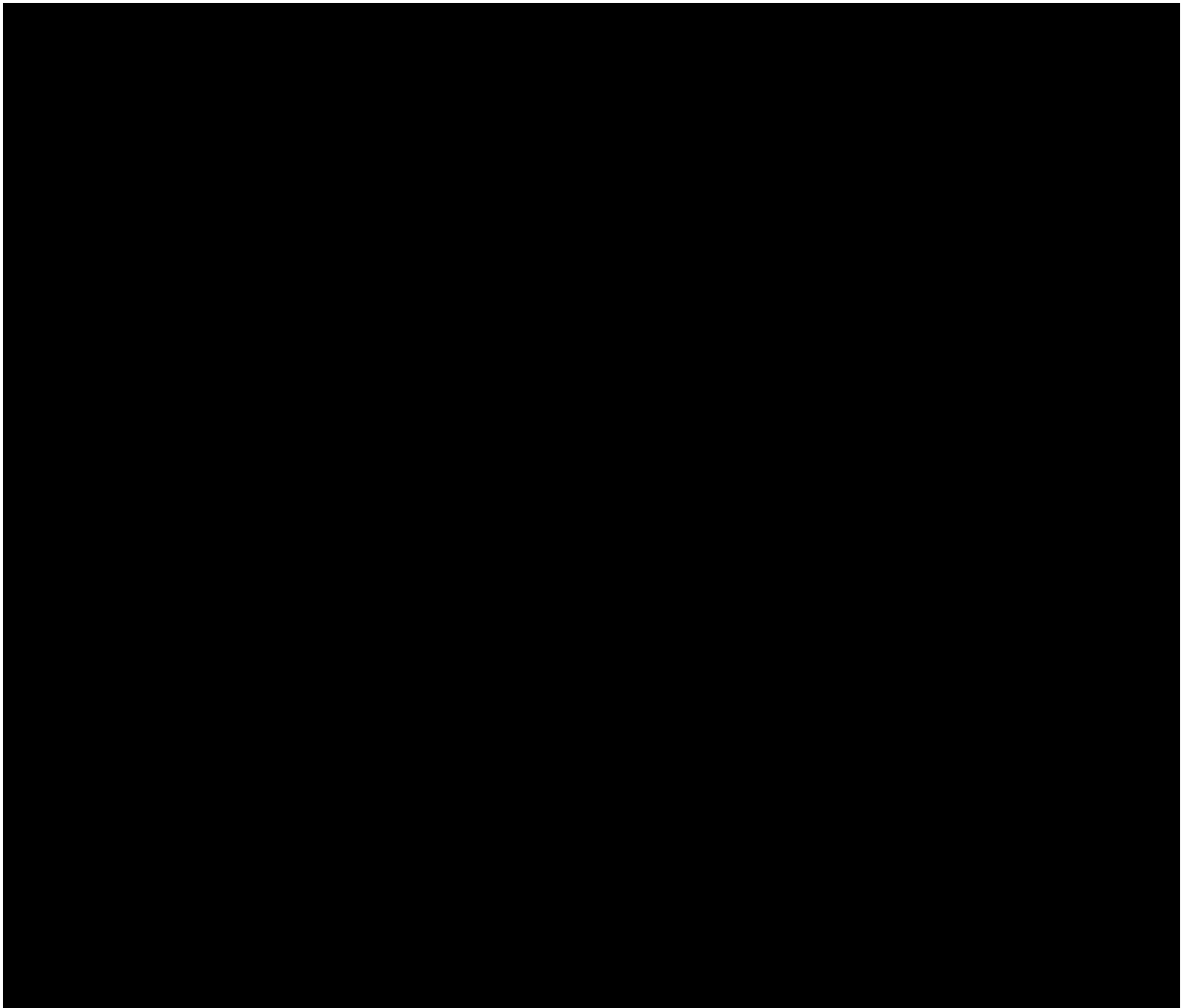
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14 Q. No. Let's look at it.

15 MR. ELSNER: 343.

16 THE WITNESS: That's a lot of ink, man. You

17 guys are killing trees and printer cartridges.

18 MR. ELSNER: I know. If we could do it all

19 electronic, believe me, I'd prefer it.

20 (WHEREUPON, a certain document was

21 marked CVS - Elsner Deposition

22 Exhibit No. 13, for identification,

23 as of 01/24/2019.)

24 BY MR. ELSNER:

1 Q. This is Exhibit 13.

2 A. So obviously the first page doesn't count.

3 Q. Well, the only reason the first page is

4 there is so we could --

5 A. It is all redacted, I know.

6 Q. No, I know, but do you see the titles on

7 the top?

8 A. Yeah, that's the header.

9 Q. The title columns.

10 A. Yeah.

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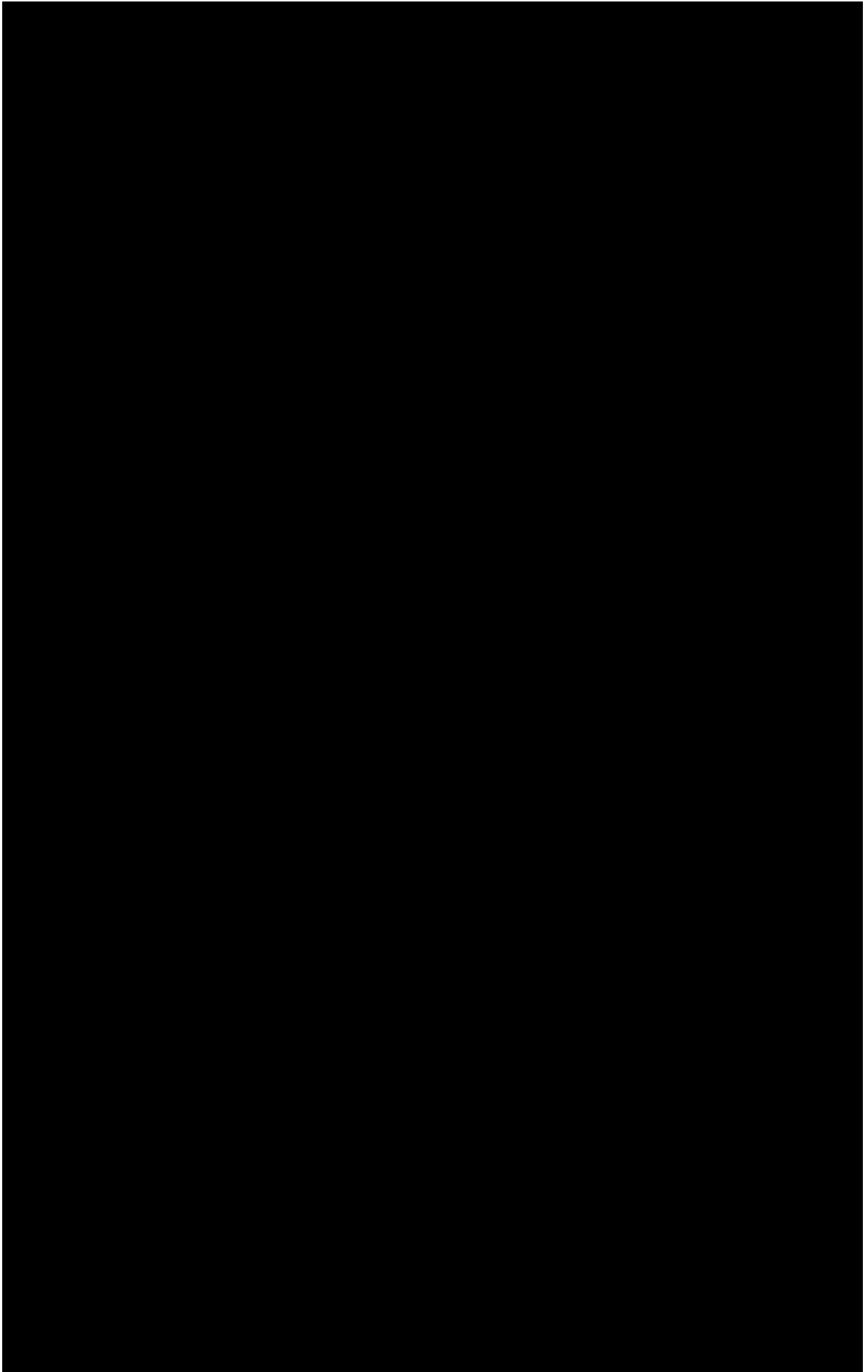
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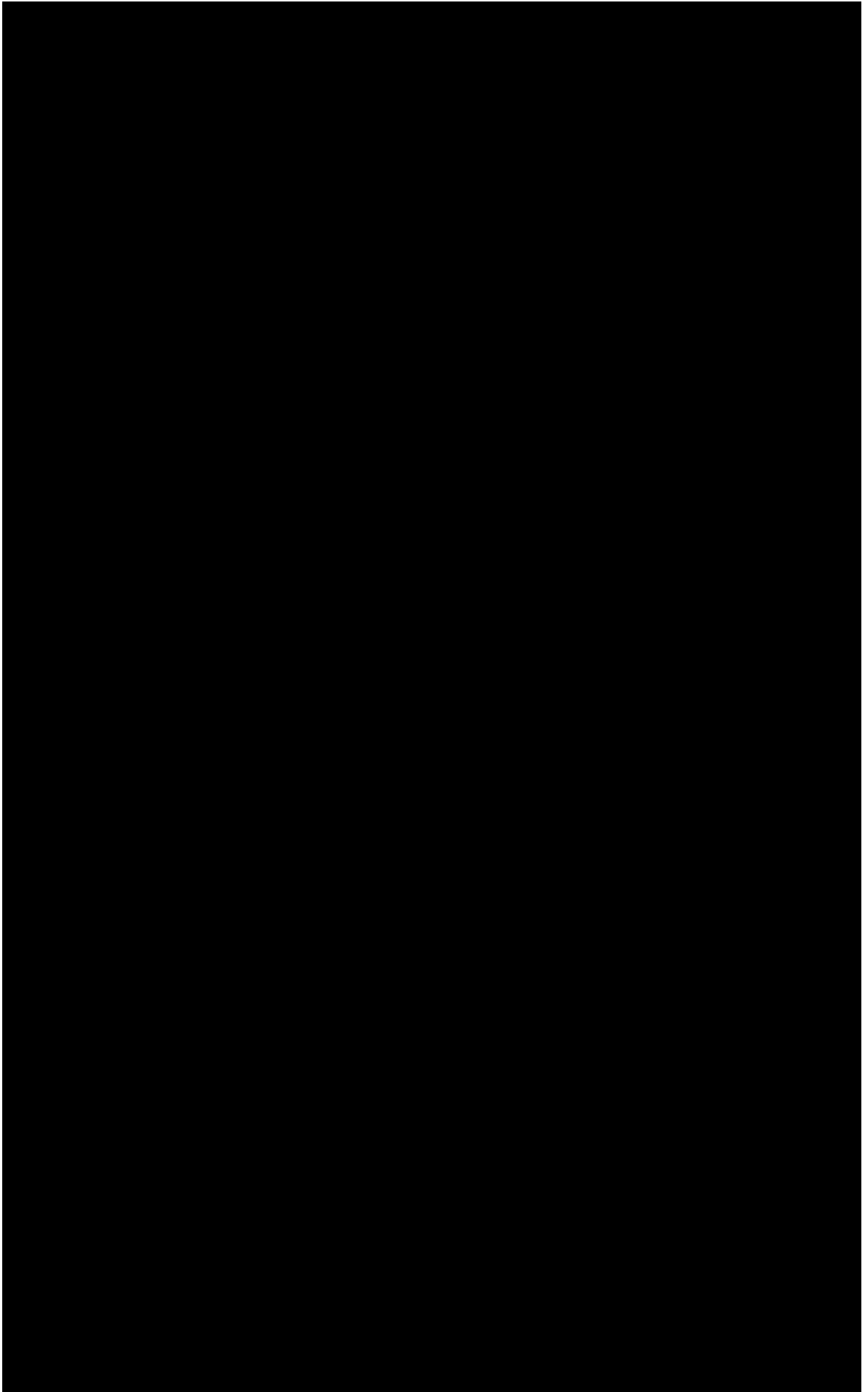
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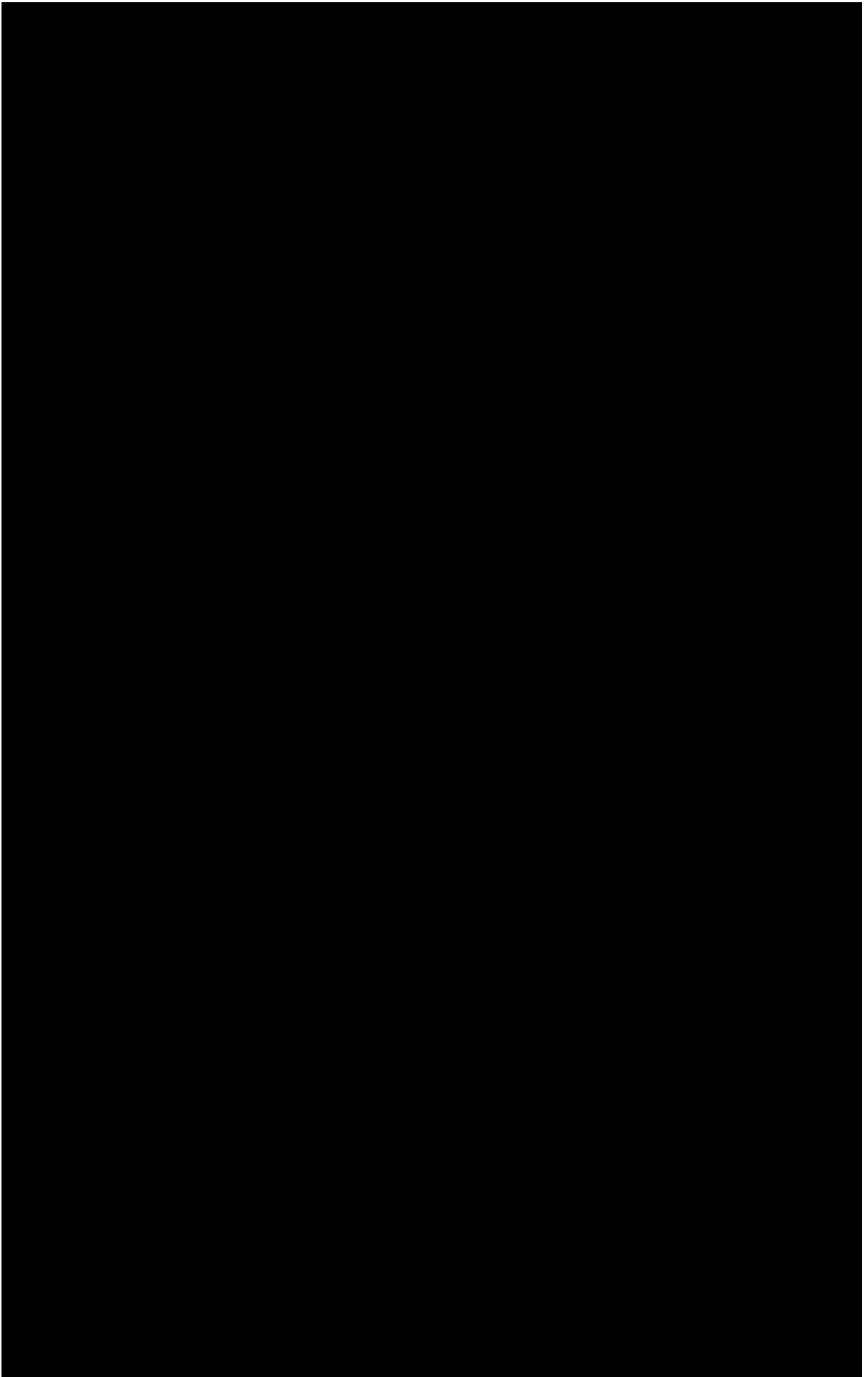
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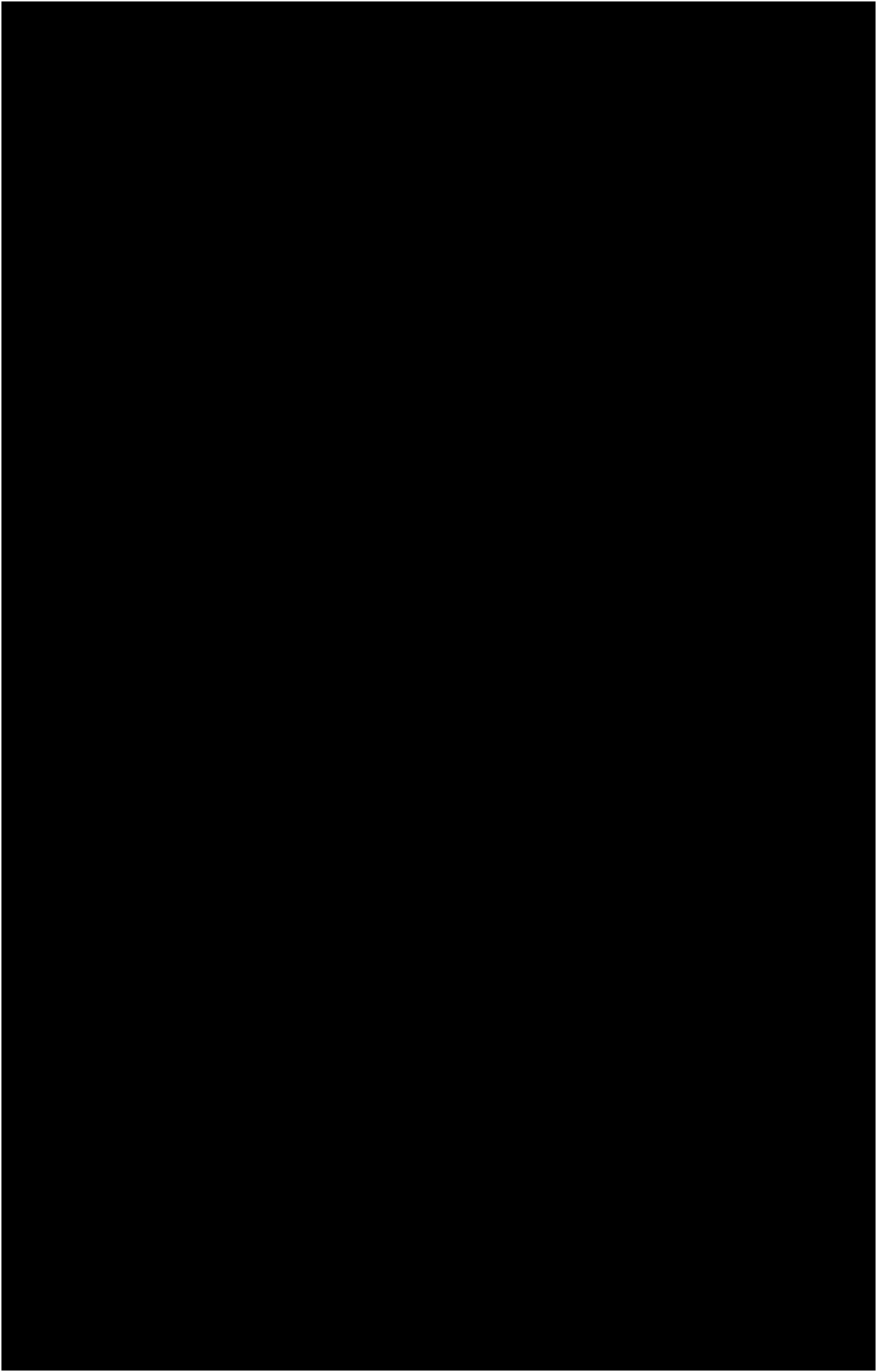
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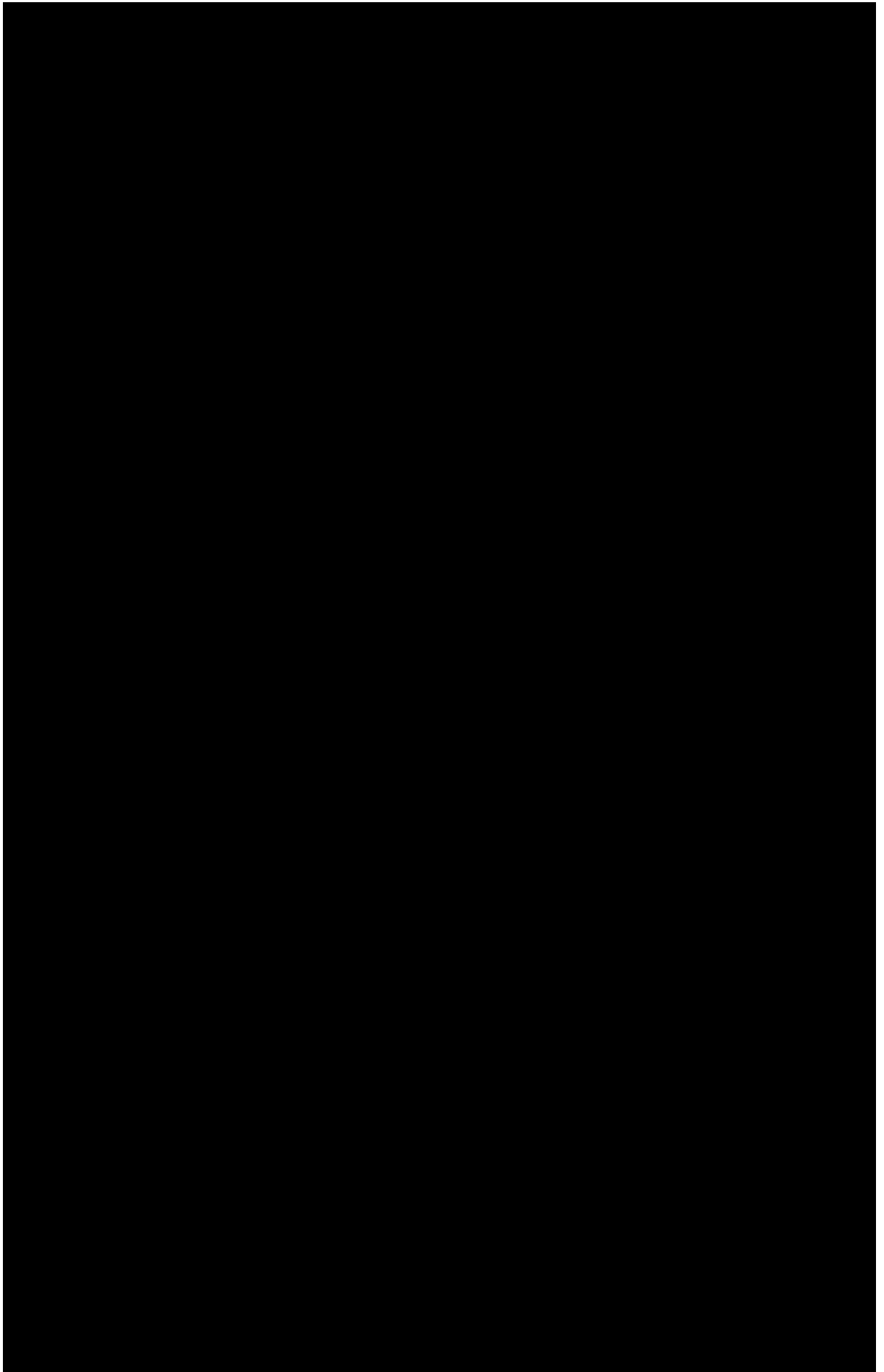
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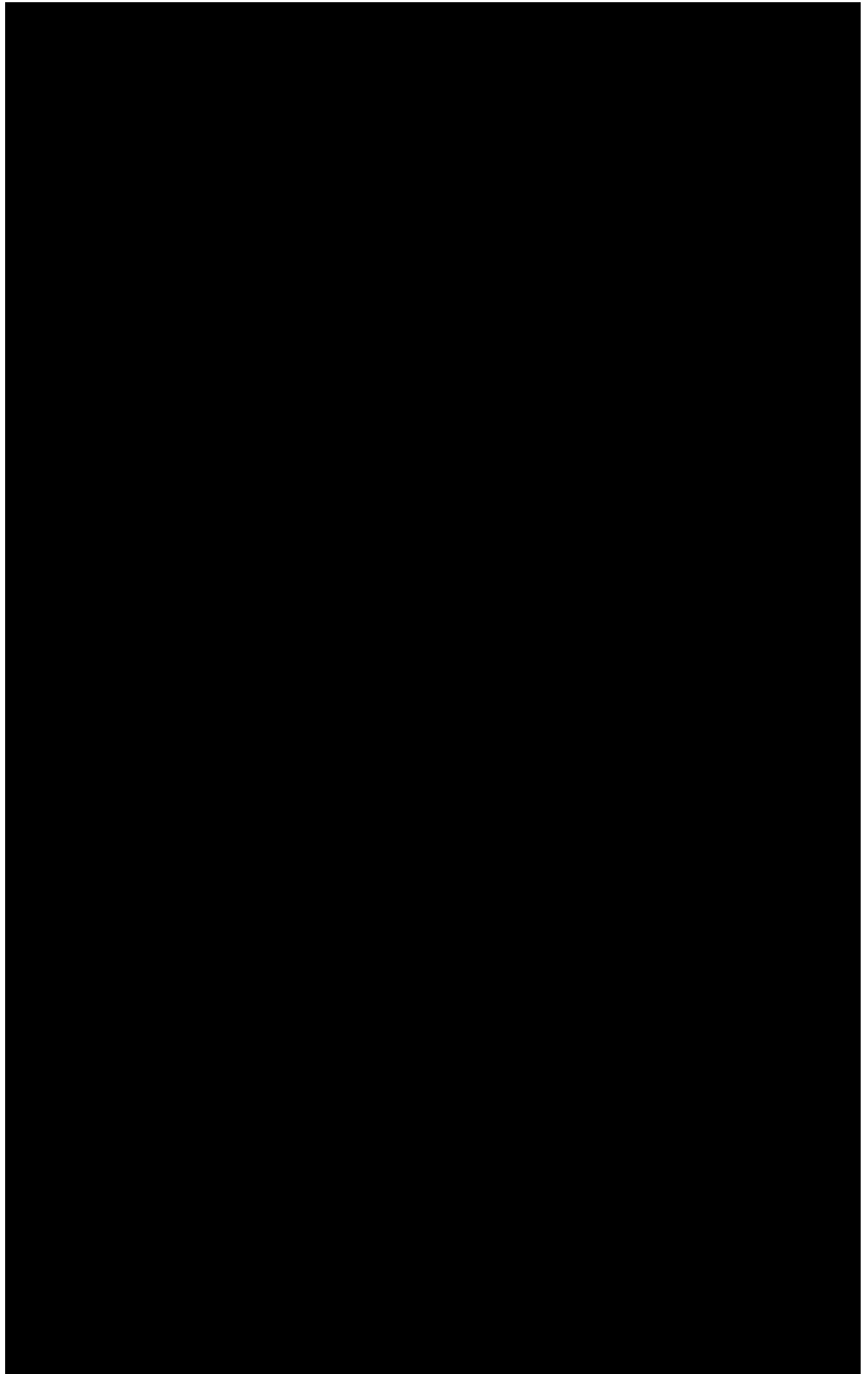
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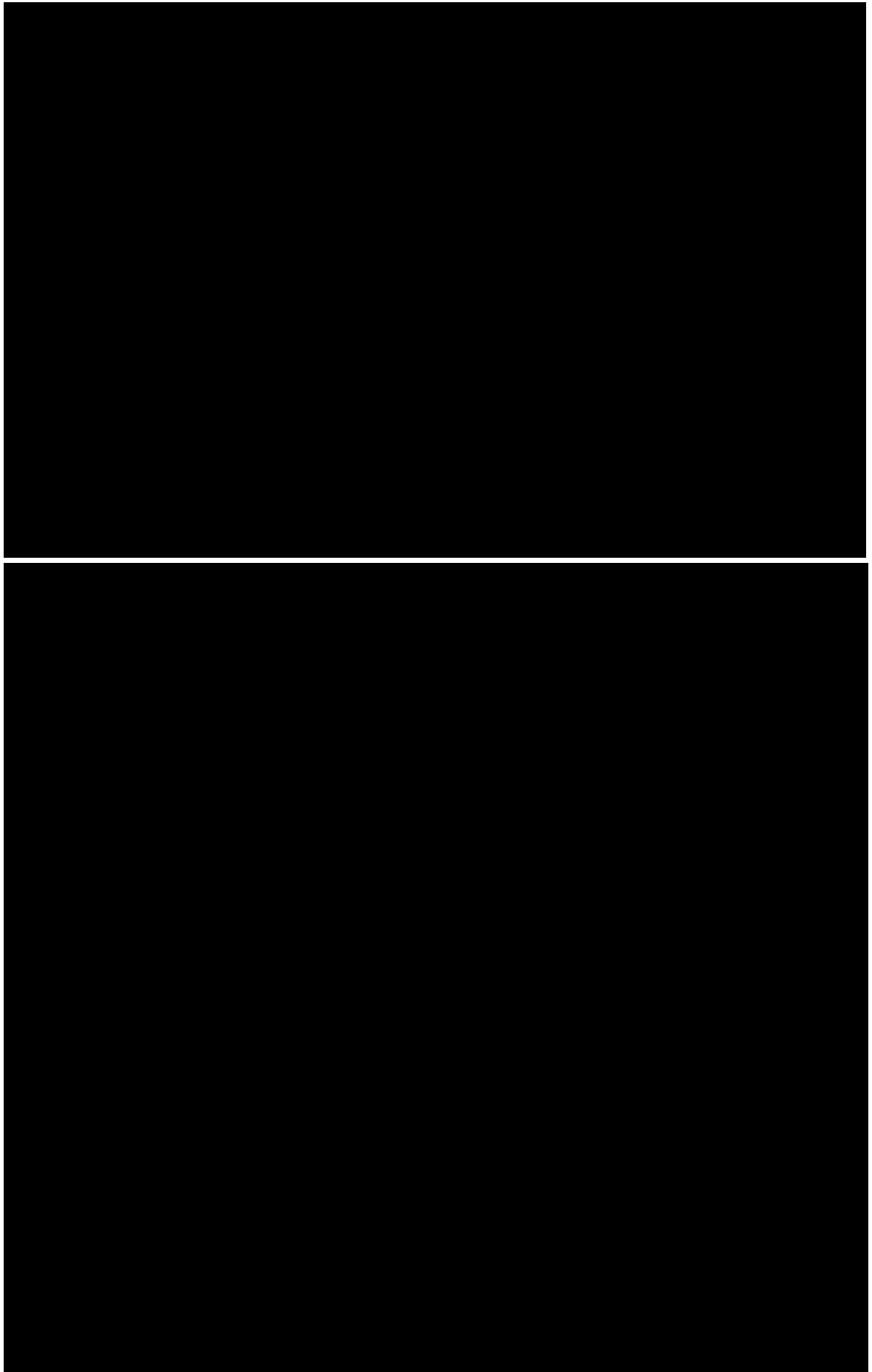
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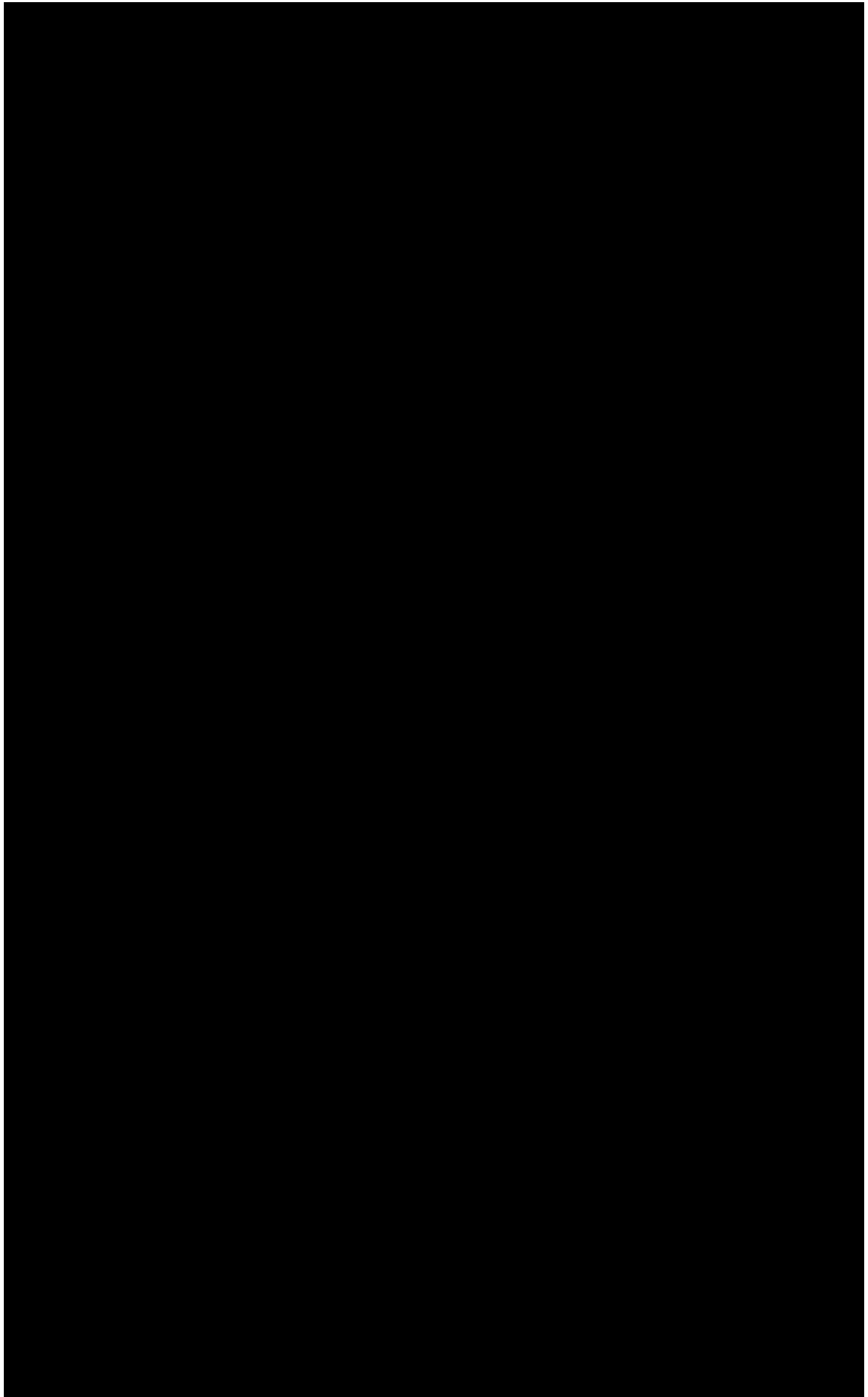
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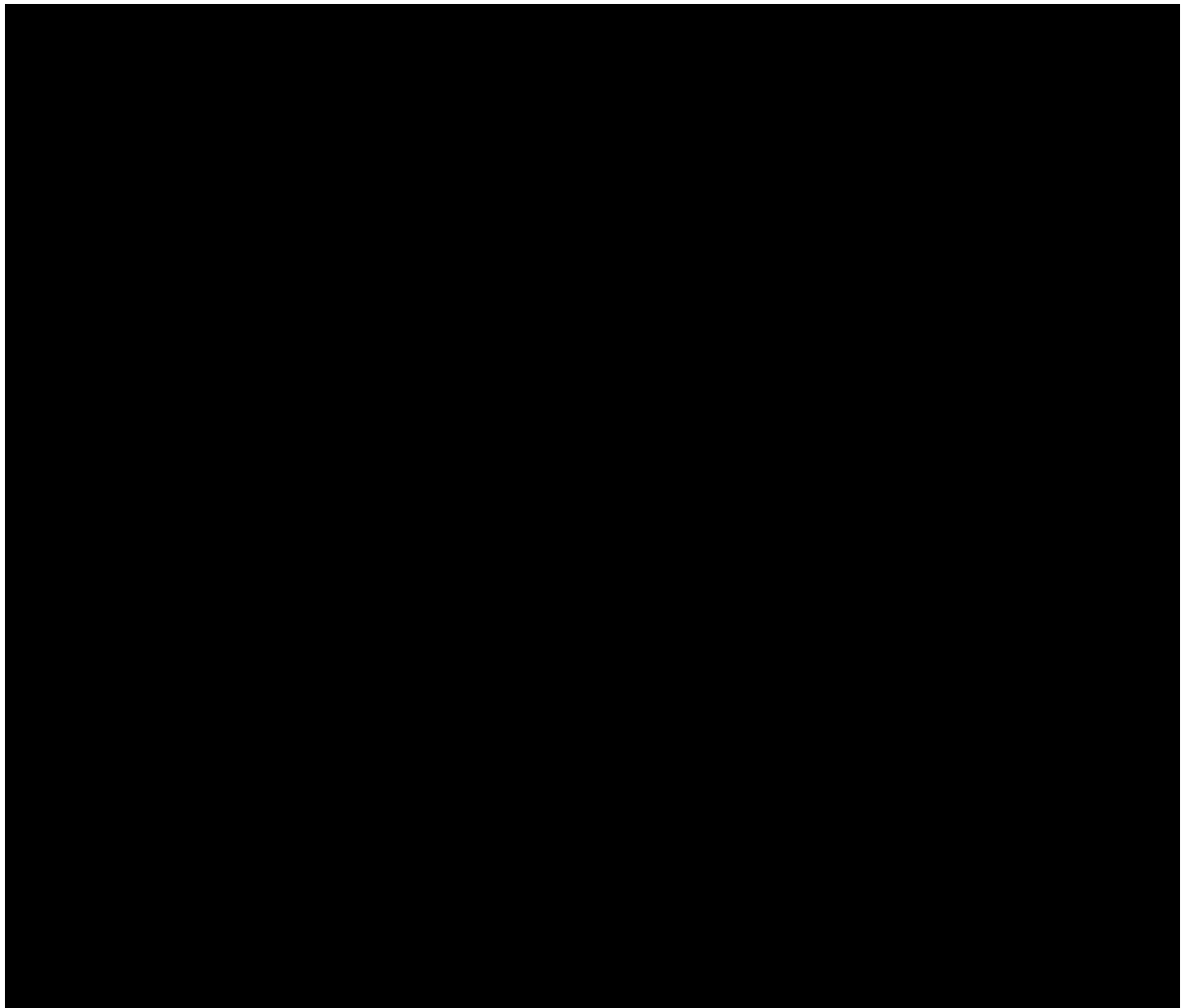
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14 Q. You didn't do that for every single
15 controlled drug order, right?

16 A. I can't say. That would be putting words
17 in my mouth. I don't remember doing it, so. Maybe I
18 did. I'm pretty good, you know.

19 Q. Okay. Well, why don't we -- why don't
20 we -- well, how long would it -- well, let -- let me
21 strike that.

22 Do you know who Gary Milikan is?

23 A. I recognize the name but I don't know him.
24 I know the name. I'm not even sure if I ever met him.

1 Q. Did he ever do some part-time work on
2 reviewing IRR reports and suspicious orders for CVS?

3 A. I don't remember who he is. I know the
4 name. I don't know what he was. Did he? I can --
5 I -- I --

6 Q. He -- he testified earlier in the case
7 and -- and he worked at CVS and he did do some
8 suspicious order monitoring review. And he said that
9 of all of the control drug orders that he'd look at in
10 a day, you know, he'd select his best estimate was
11 about 5 percent of which he would then do this sort of
12 deeper dive review.

13 And so my question to you is, does that
14 sound consistent with what you did?

15 MR. CLARK: Object to the form.

16 BY THE WITNESS:

17 A. I can't say. I mean, what percentage.
18 It's just --

19 BY MR. ELSNER:

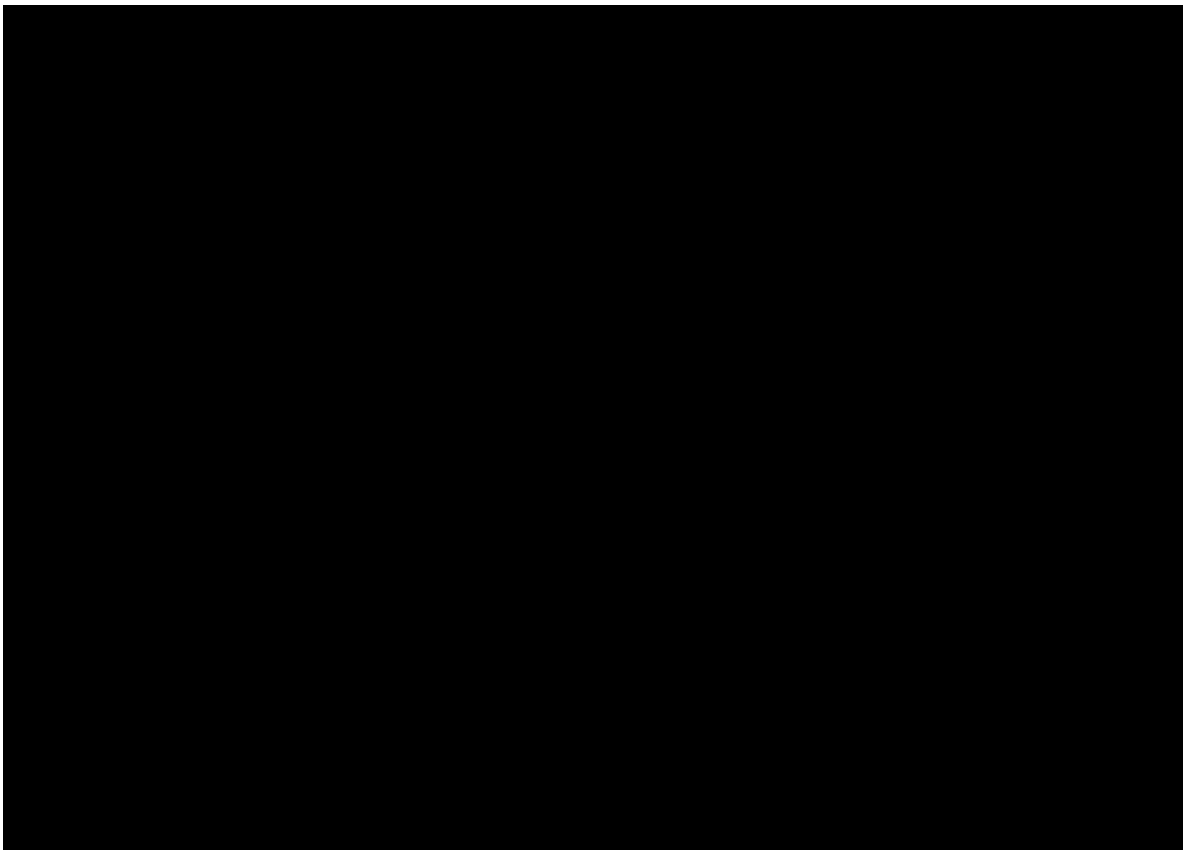
20 Q. Do you have a reason to dispute what Gary
21 Milikan said?

22 A. I don't have a reason to dispute.

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12 Q. I want to show you this document which
13 we'll mark as Exhibit 14.

14 (WHEREUPON, a certain document was
15 marked CVS - Elsner Deposition
16 Exhibit No. 14, for identification,
17 as of 01/24/2019.)

18 BY MR. ELSNER:

19 Q. This is a -- this is a -- an e-mail from
20 Craig Schiavo.

21 And who -- do you -- do you remember
22 working with Craig Schiavo?

23 A. Nope.

24 See, a lot of this, like I say, we didn't

1 work for the DC. We worked for corporate. We
2 happened to be located -- so most of the people, most
3 of the -- the names were -- were only e-mail
4 correspondence or phone calls, you know.

5 Q. Right.

6 A. We didn't see most of these people.

7 Q. Right. So Craig Schiavo was at corporate.

8 He was in Rhode Island.

9 A. Yeah, see, his name sounded fam -- it
10 sounds familiar, but I never personally met him.

11 Q. Okay. And this e-mail he sends to
12 Pam Hinkle and to Aaron Burtner, right?

13 A. I don't see Aaron's name on there, do I?

14 Q. It's the very last one on the "to" -- the
15 first "to" line.

16 A. Oh, yeah, yeah. I'm -- but there. I --

17 Q. Okay.

18 A. -- I'm somewhere on here, right, so.

19 Q. No, you are not. This is before you got
20 there.

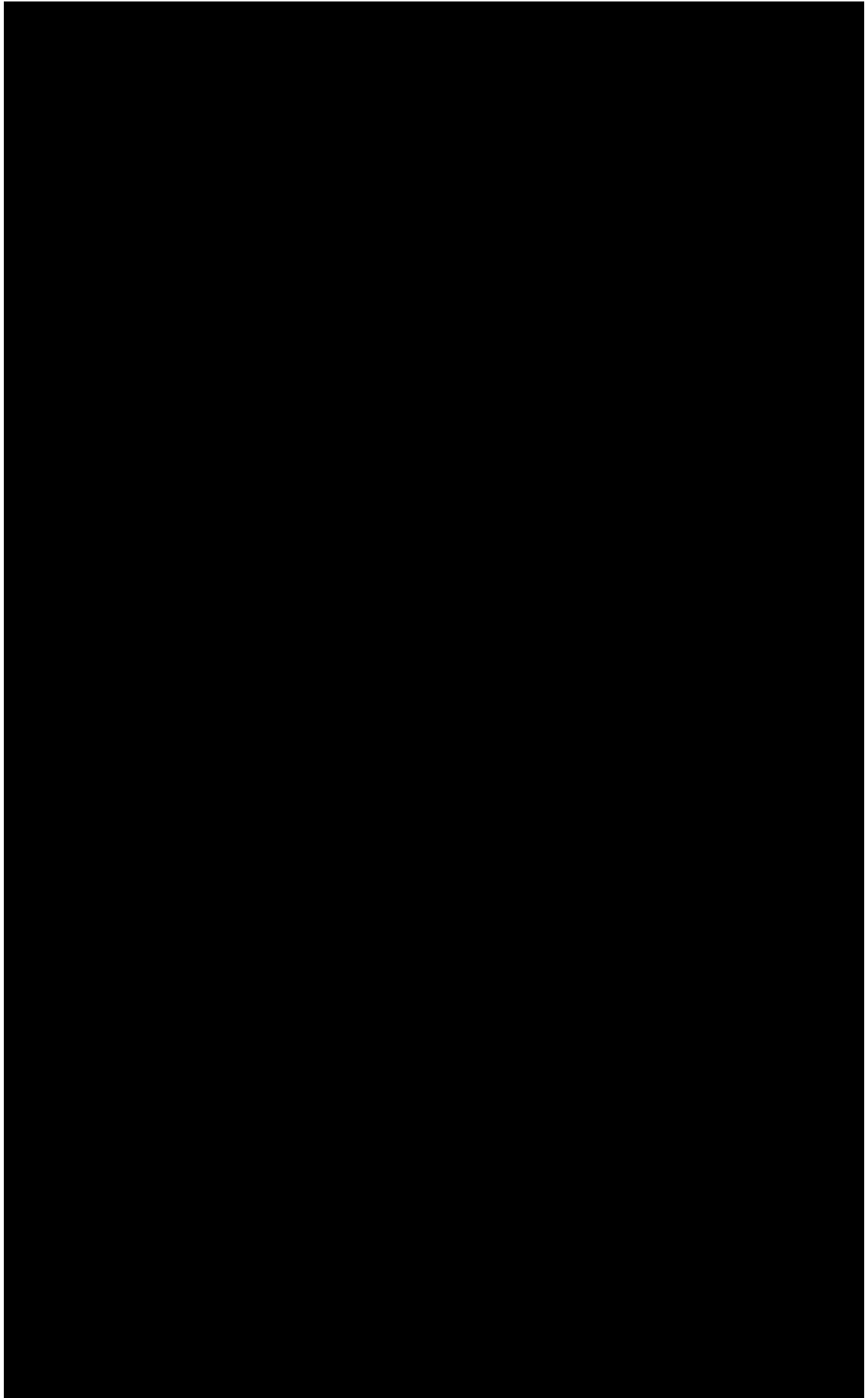
21 A. Okay.

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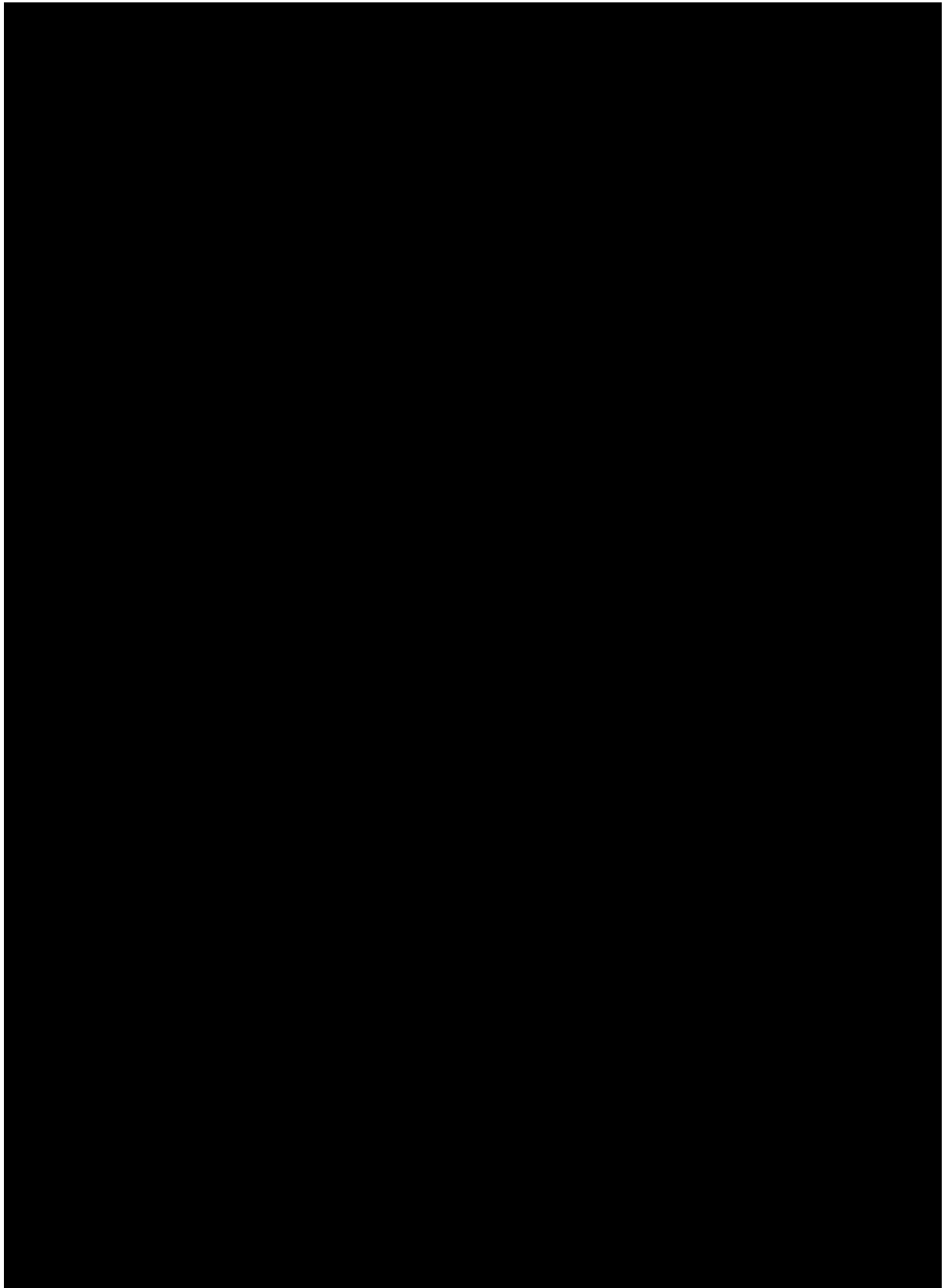
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22 Q. -- let me see -- let me show you 337.

23 A. Do they have phone records back then
24 perhaps or...?

1 Q. So I don't know. We -- I have -- I have
2 something that might be a little better than a phone
3 record I'm going to show you and see if that kind of
4 helps jog your memory.

5 (WHEREUPON, a certain document was
6 marked CVS - Elsner Deposition
7 Exhibit No. 15, for identification,
8 as of 01/24/2019.)

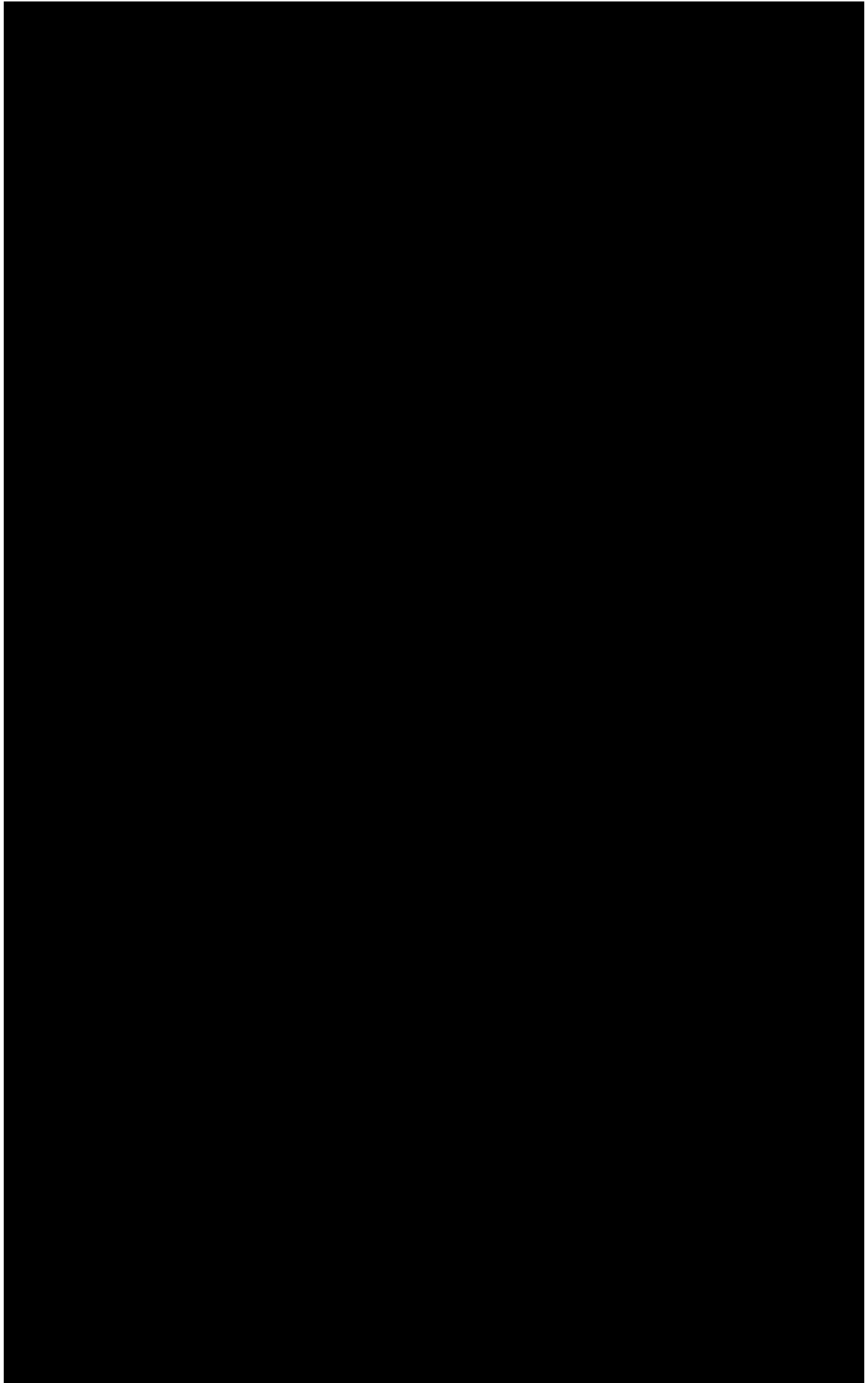
9 BY MR. ELSNER:

10 Q. This is Exhibit 15.
11 And this is -- was put together in July
12 of 2012, so before you got there. It's an e-mail from
13 Aaron Burtner to Pam Hinkle.

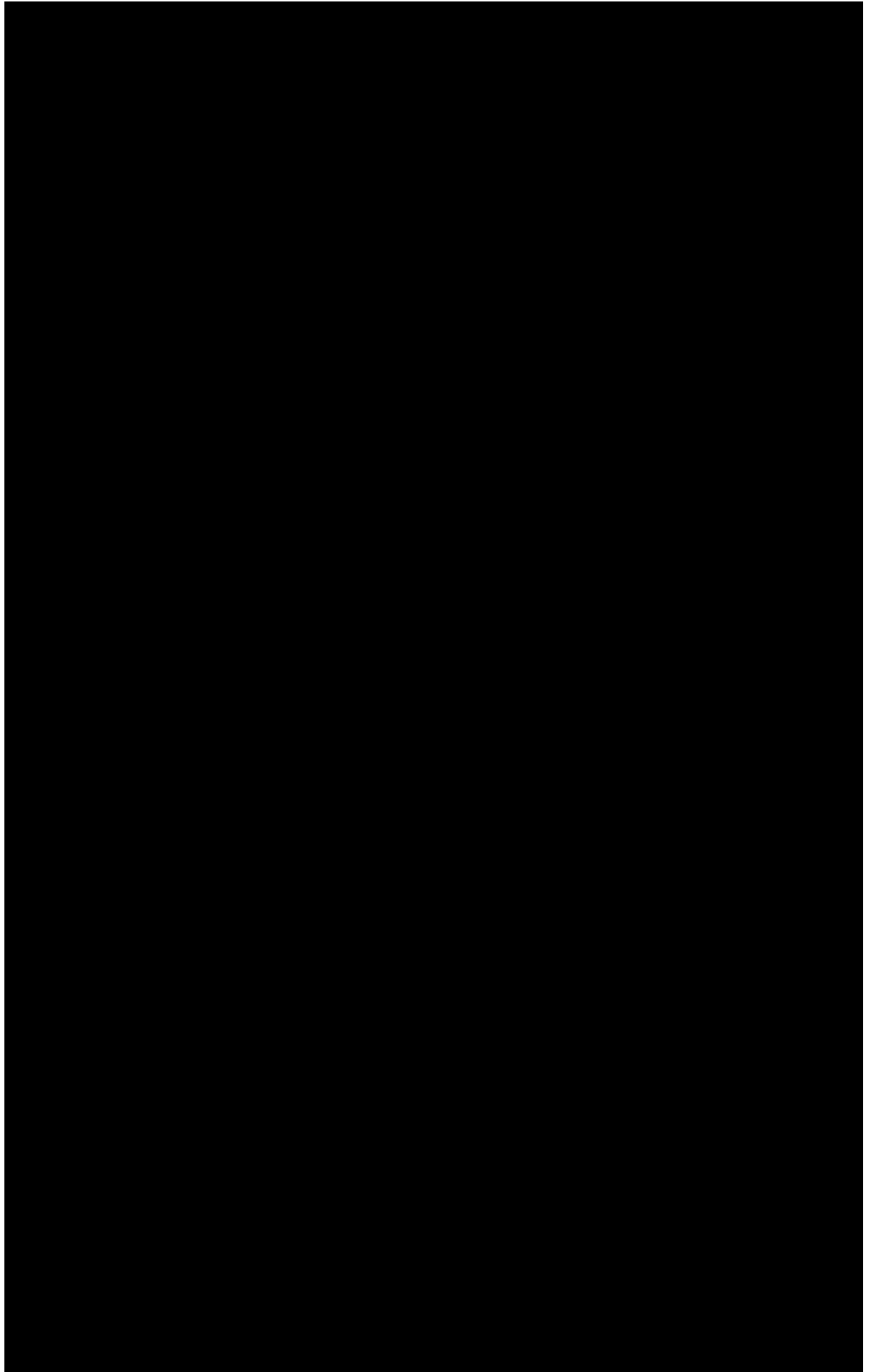
14 A. Ah, yeah, okay.

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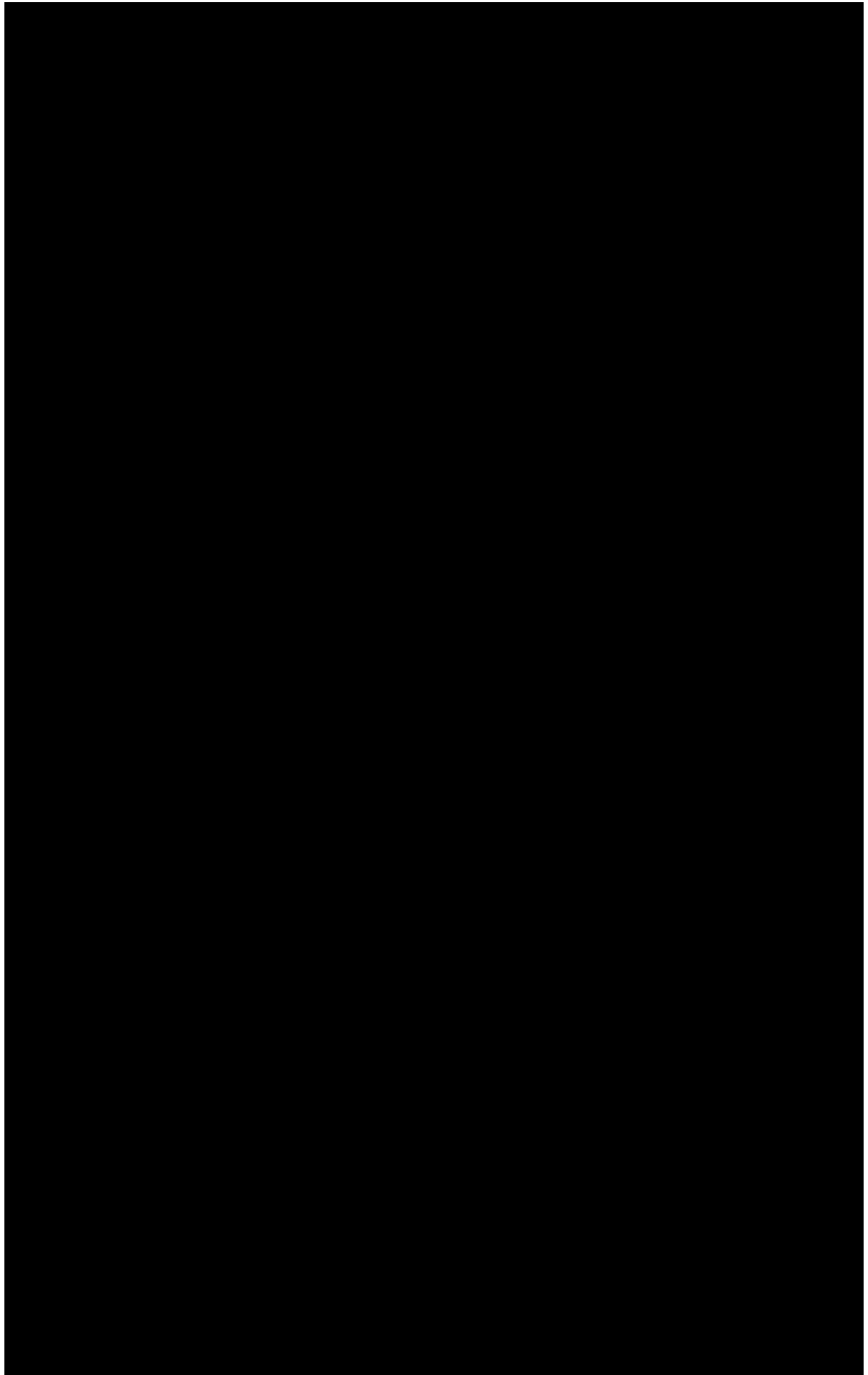
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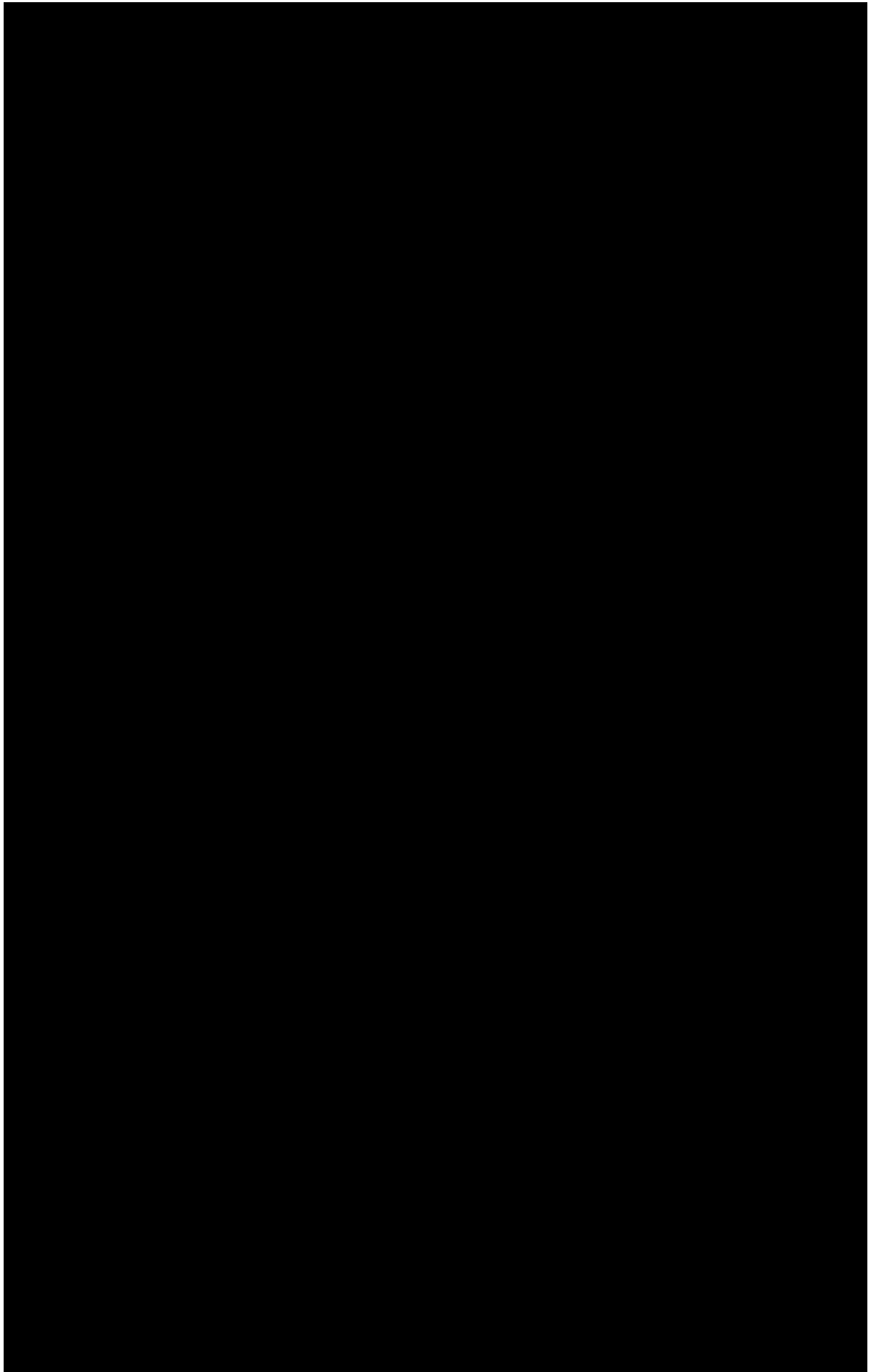
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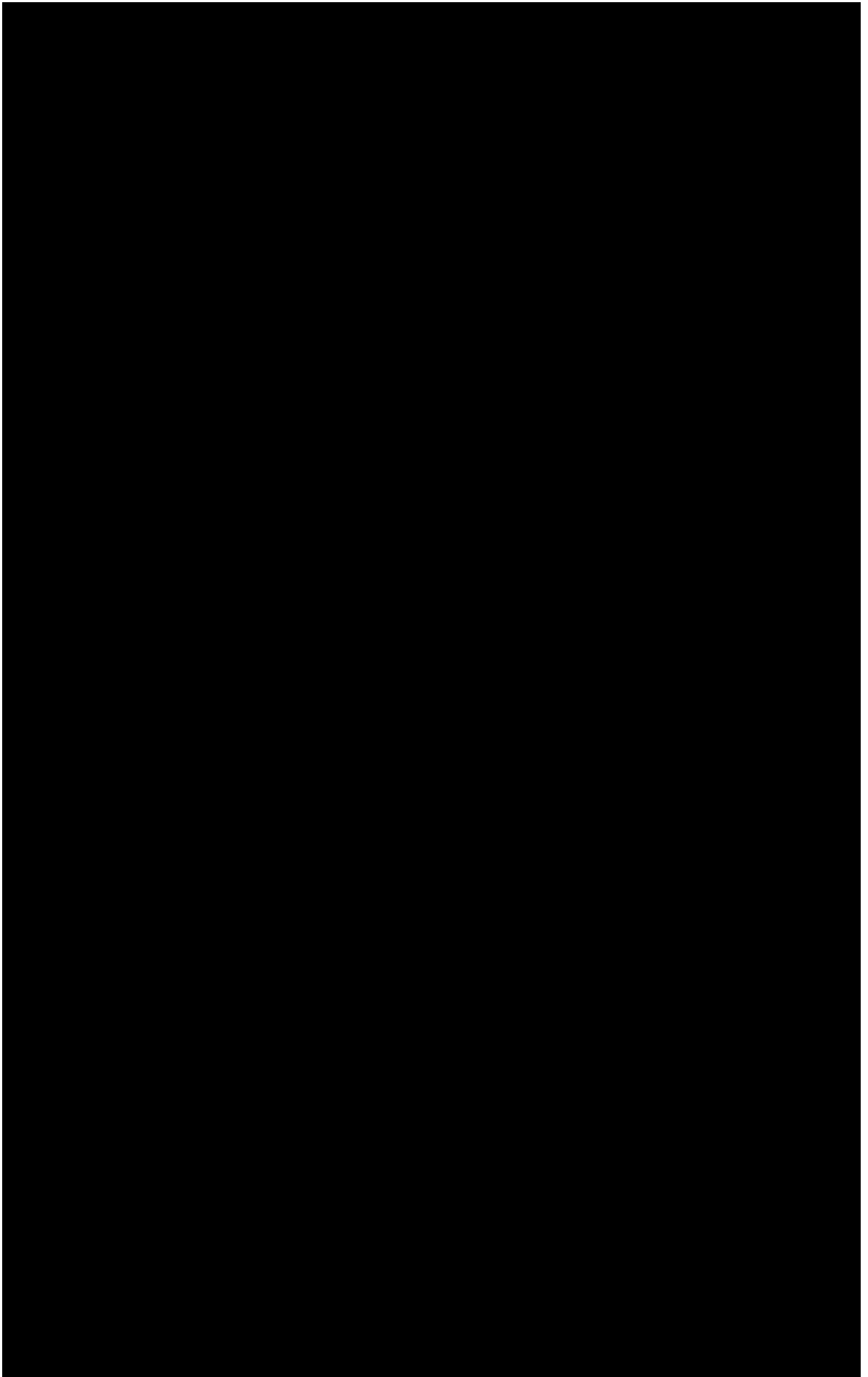
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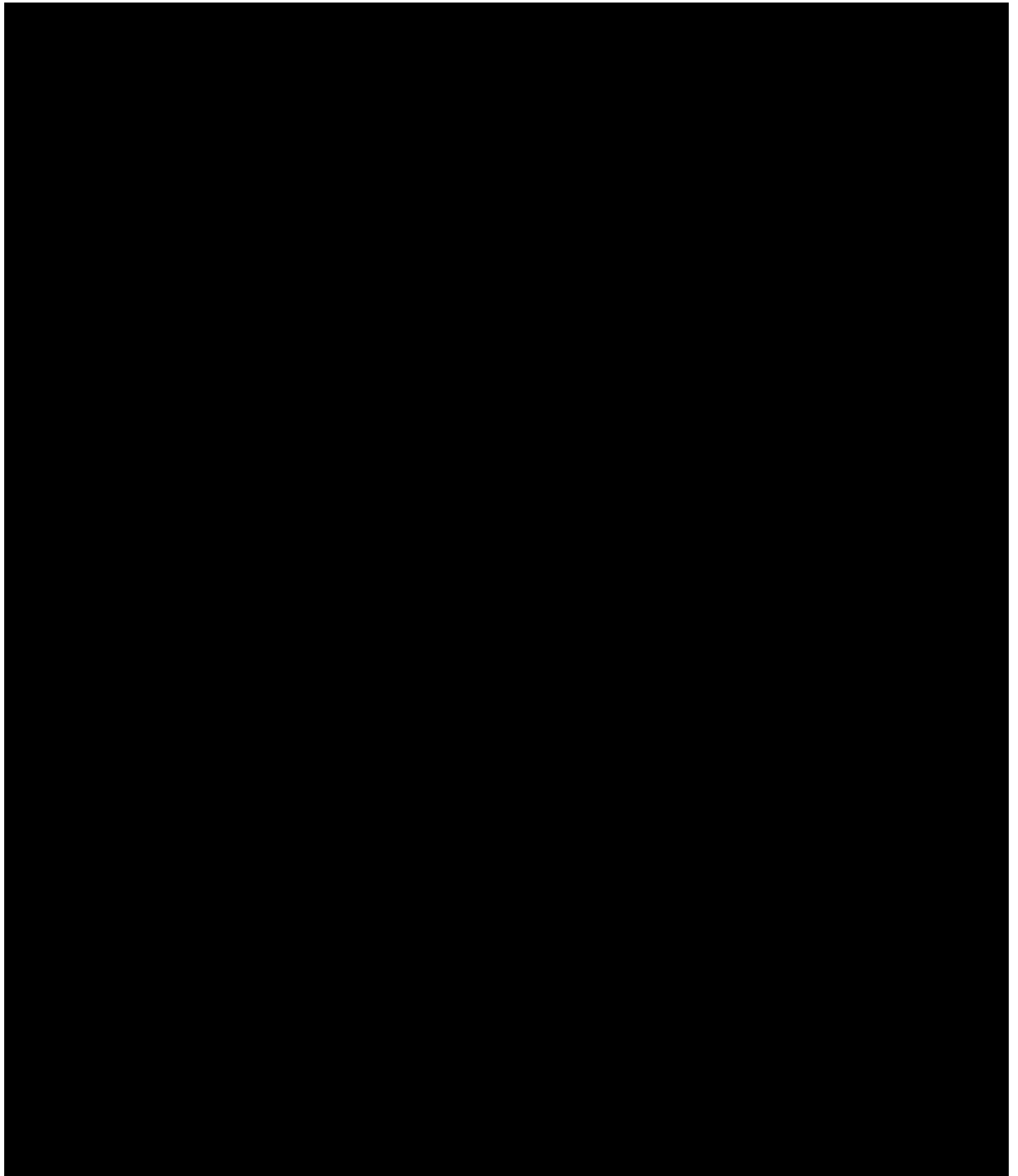
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19 Q. Okay.

20 A. The only thing I remember -- the only
21 thing I can remember, Aaron, he started out at Mike's
22 Car Wash --

23 Q. Oh, yeah?

24 A. -- as a safety manager.

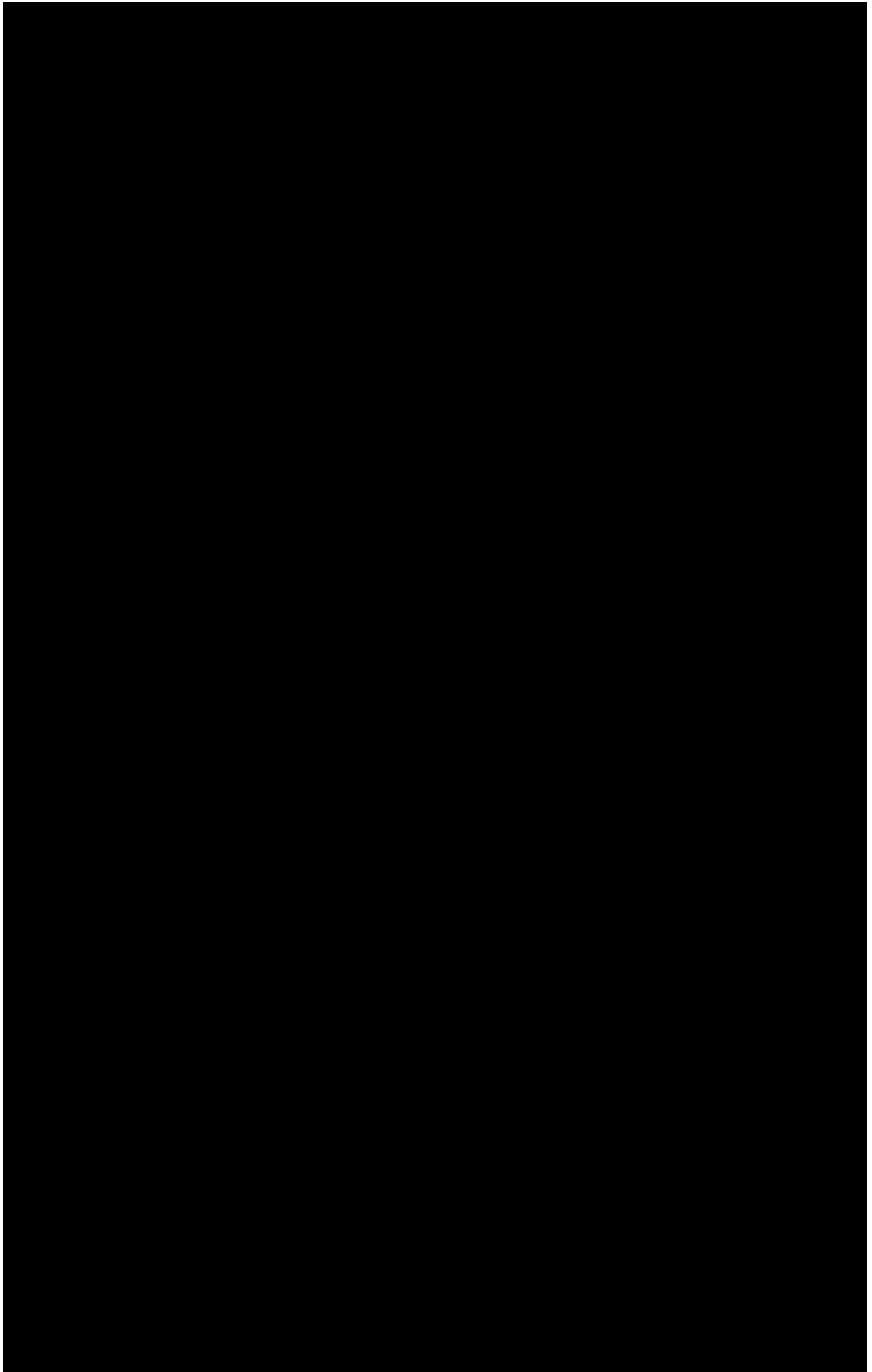
1 Q. Okay.

2 A. So he made a jump, too, you know. And --
3 and other than that, I don't remember why he got
4 involved with the job.

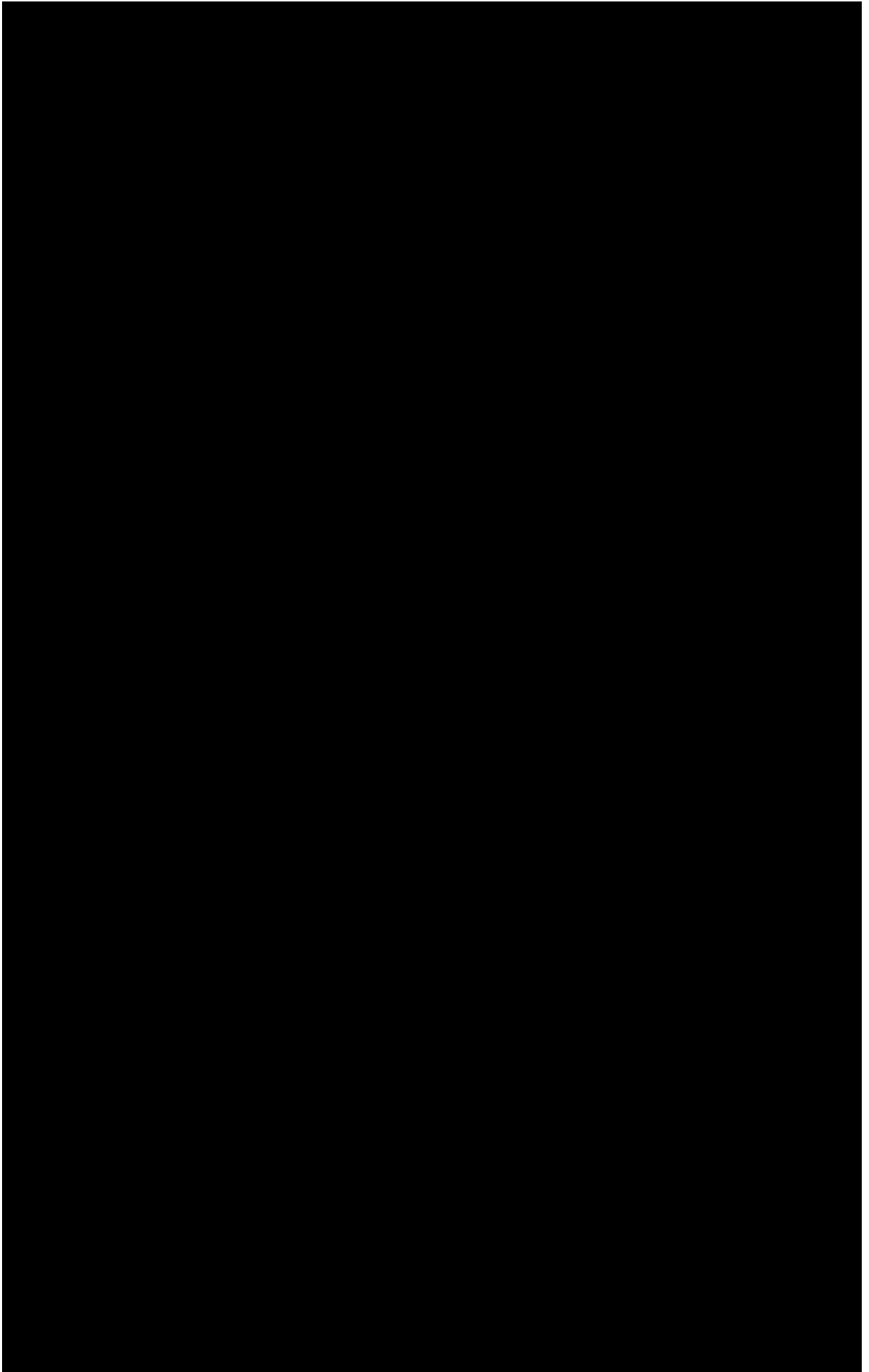
5 Q. Okay.

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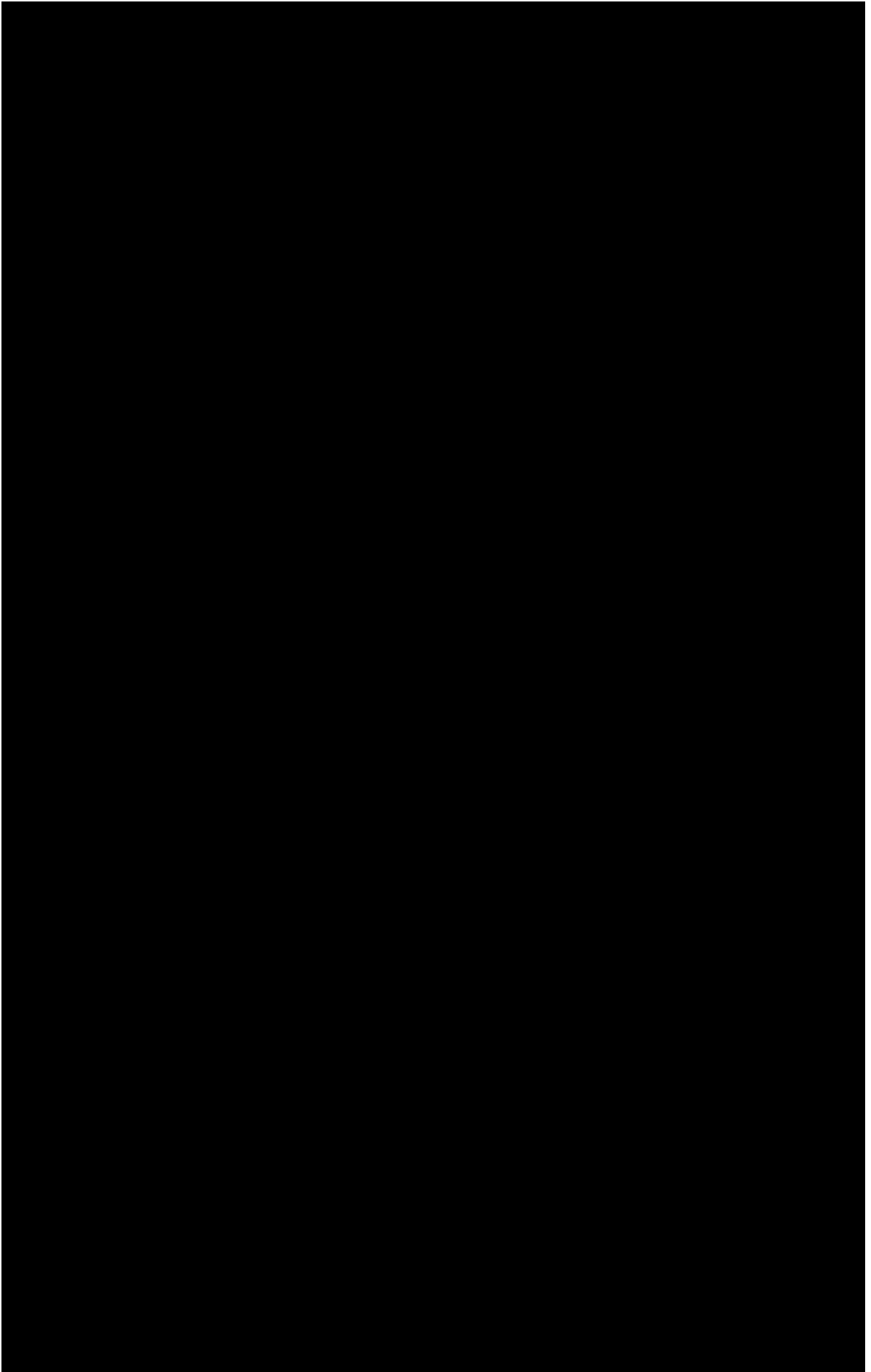
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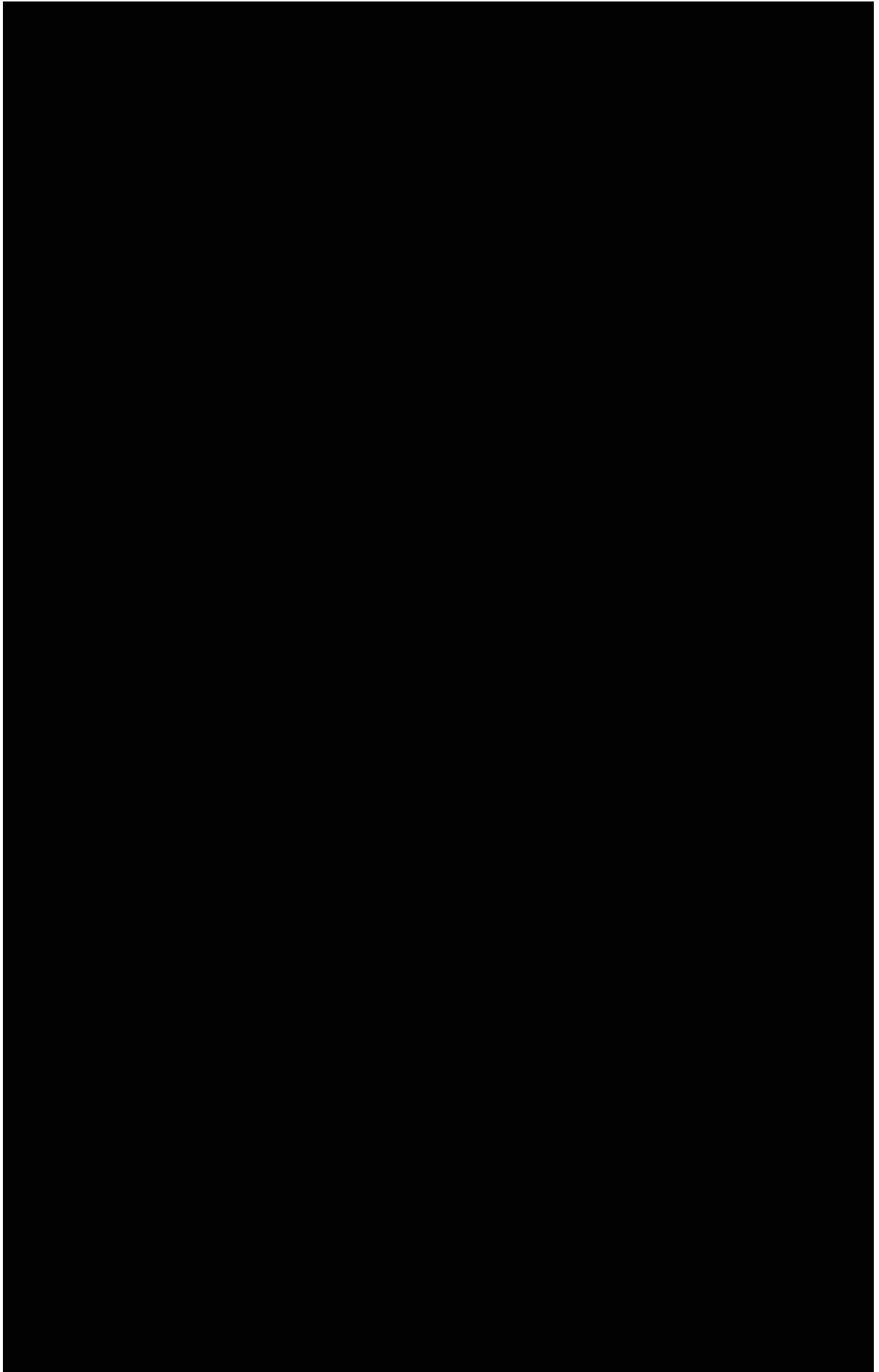
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15 Q. Okay.

16 A. Do you -- can you -- do you remember, does
17 it say if I was salary or hourly? I can't remember.

18 Q. I asked you the question. I don't know
19 the answer.

20 A. I can't remember. I was just curious. I
21 think I was salary, but...

22 I thought you guys were only supposed to
23 ask questions you already knew the answers to?

24 Q. Well, that's the difference between a good

1 lawyer and me.

2 MR. CLARK: No objection.

3 MR. ELSNER: Oh, I'm going to ask that that be
4 stricken from the record.

5 MR. CLARK: Move to strike. And I apologize.

6 MR. ELSNER: I'm just teasing.

7 Can we see 338.

8 THE WITNESS: So who is running this, is it you
9 or...? Ah, you're pretty good. I thought you were
10 pretty good for being handing me documents and still
11 running that.

12 MR. ELSNER: That would not be me, my friend.

13 (WHEREUPON, a certain document was
14 marked CVS - Elsner Deposition
15 Exhibit No. 16, for identification,
16 as of 01/24/2019.)

17 BY MR. ELSNER:

18 Q. Exhibit 16.

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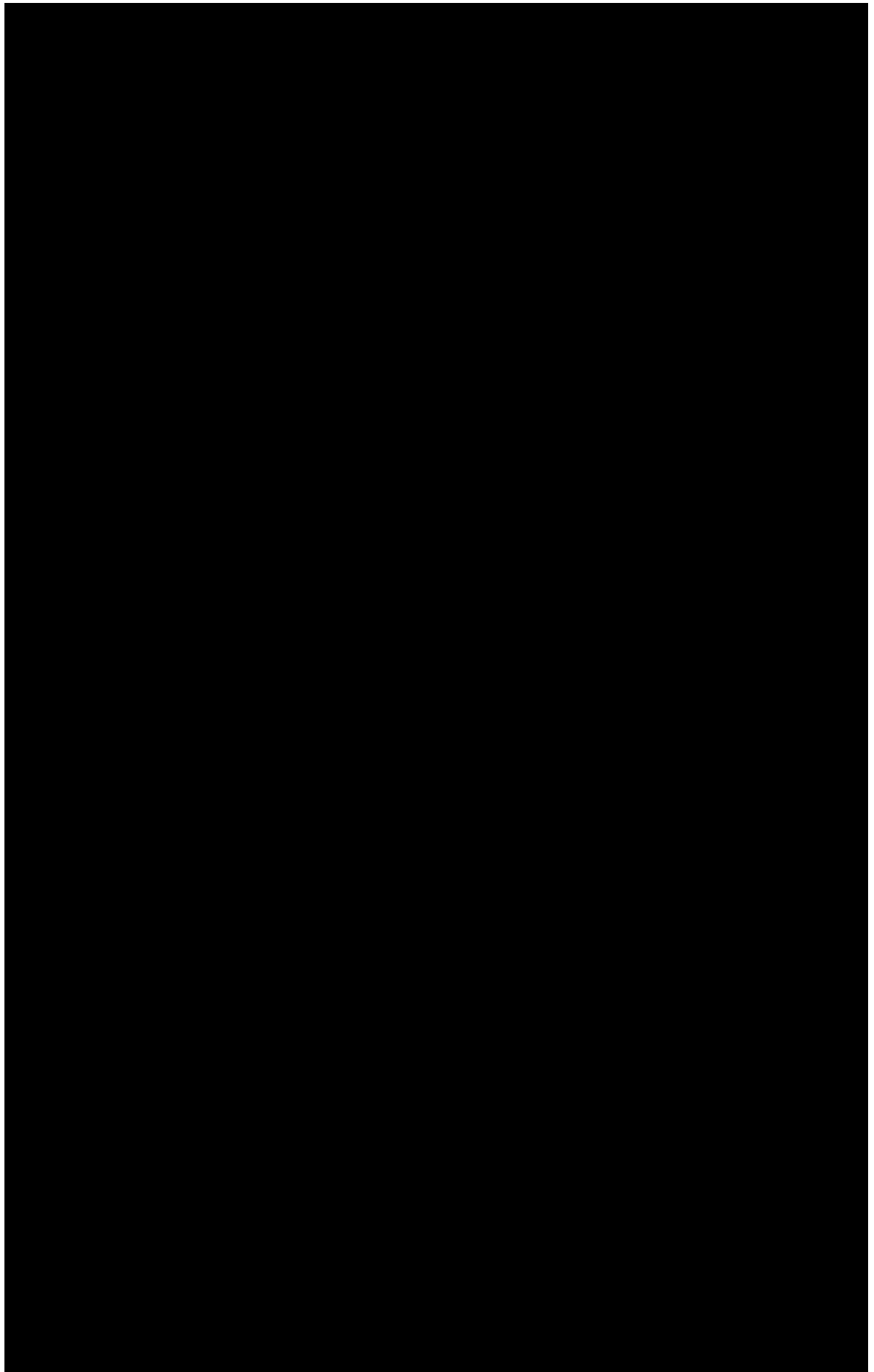
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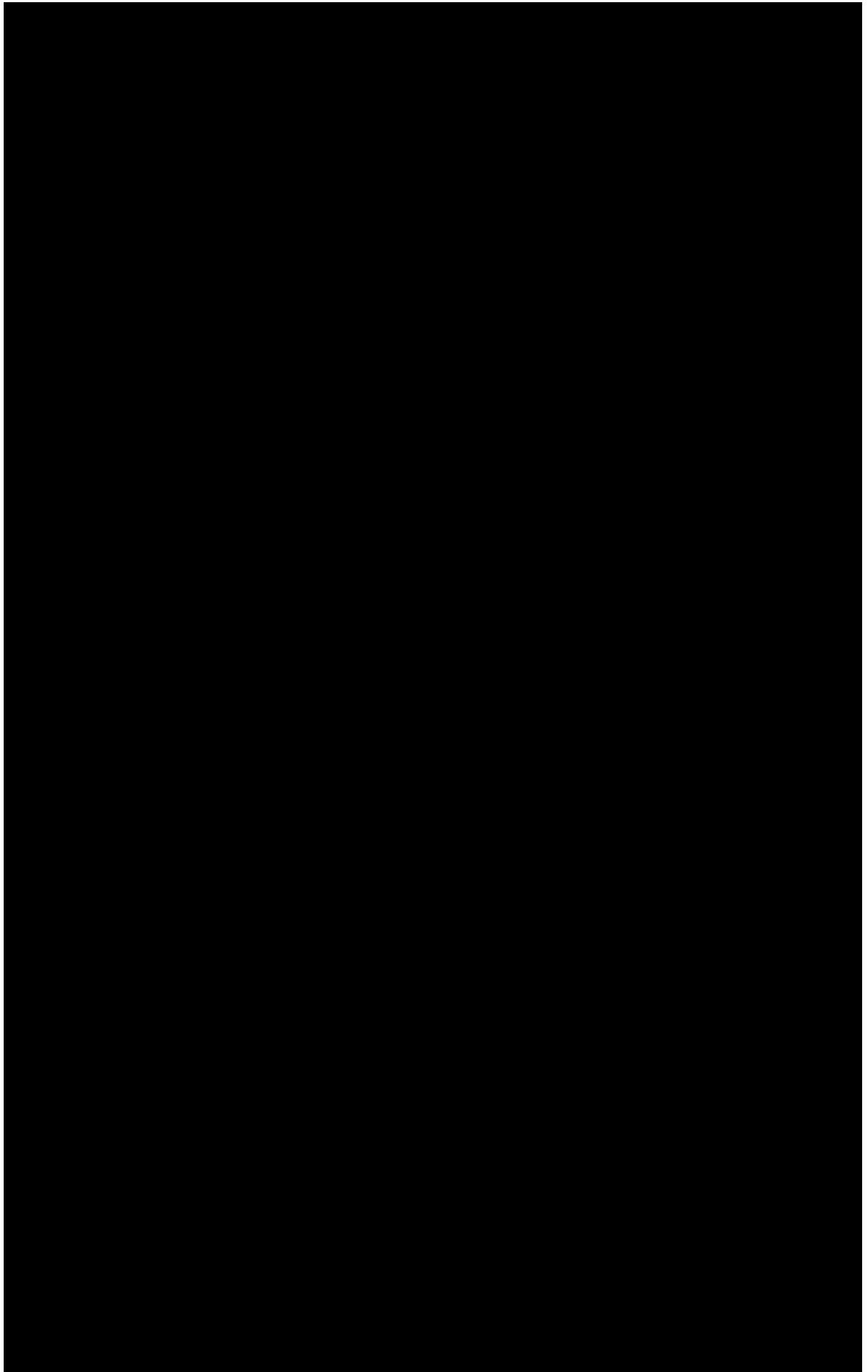
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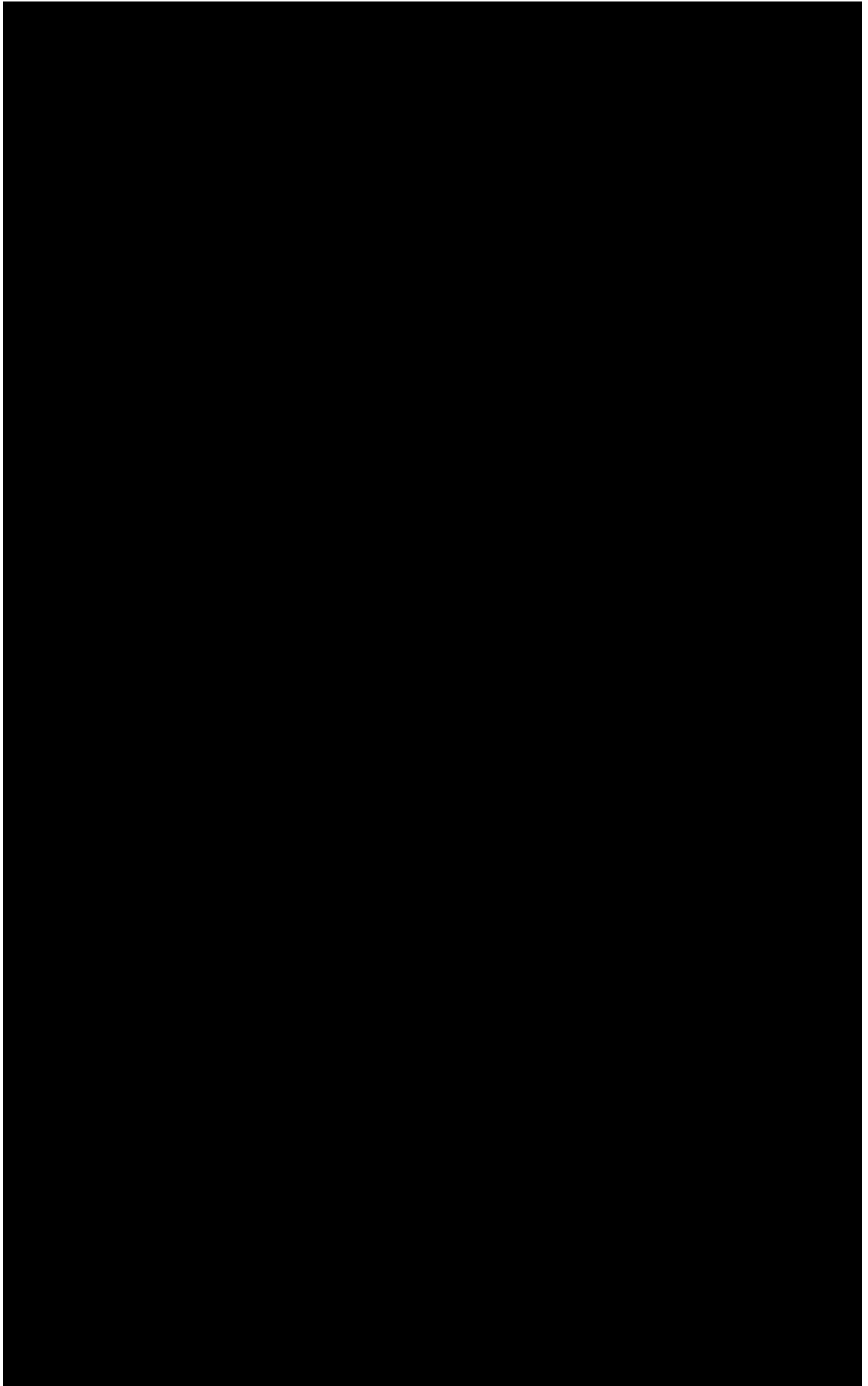
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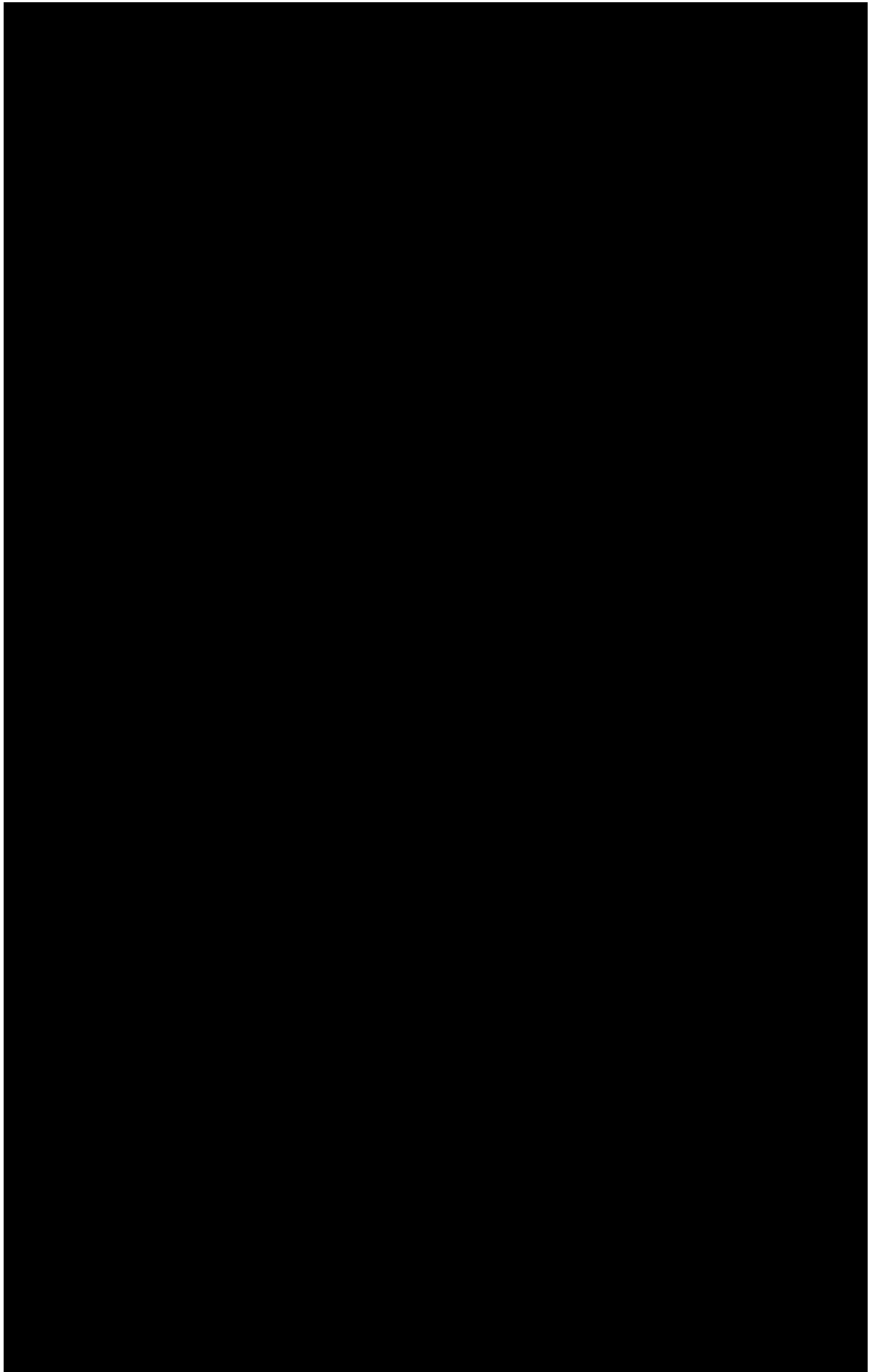
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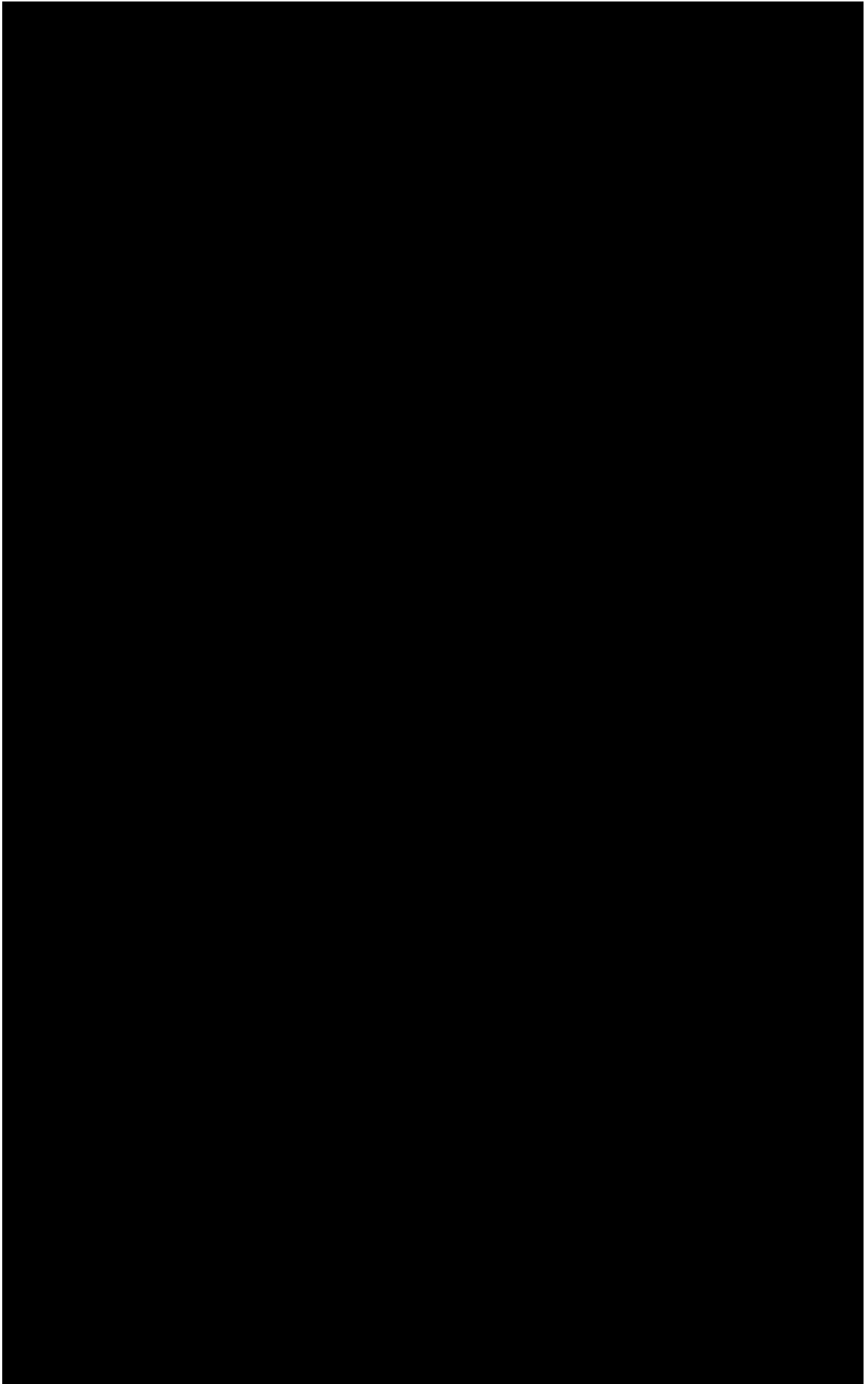
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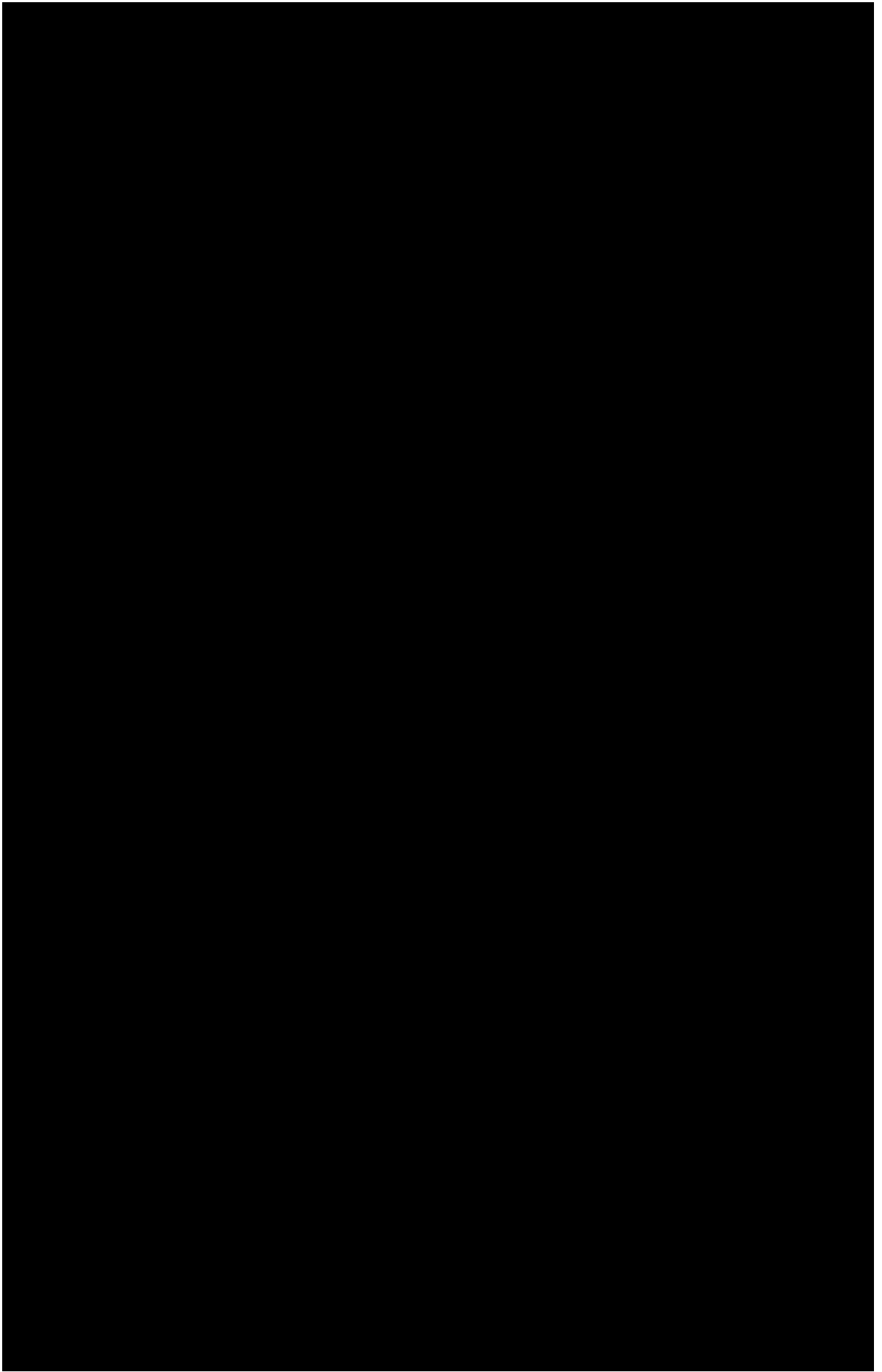
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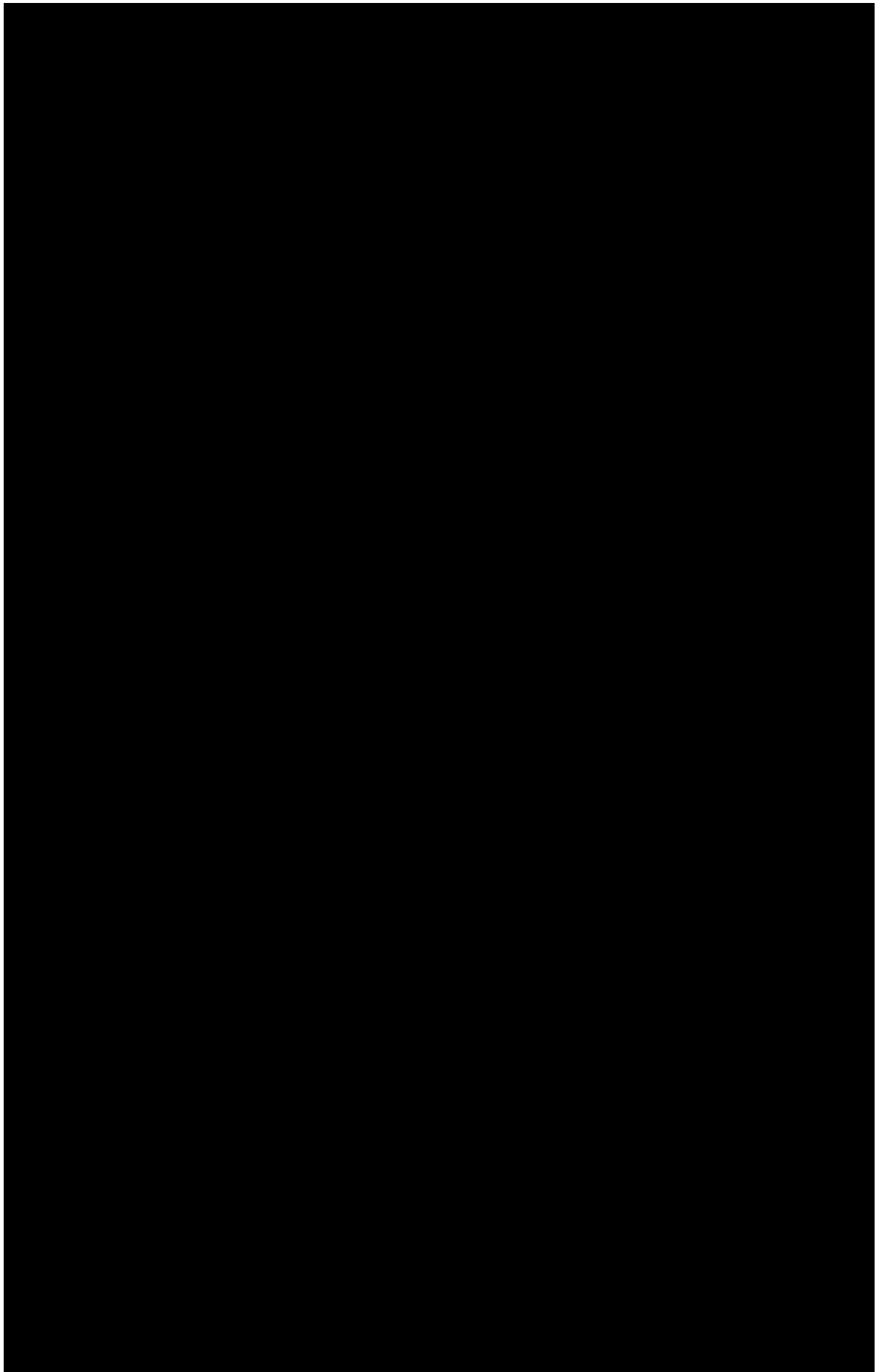
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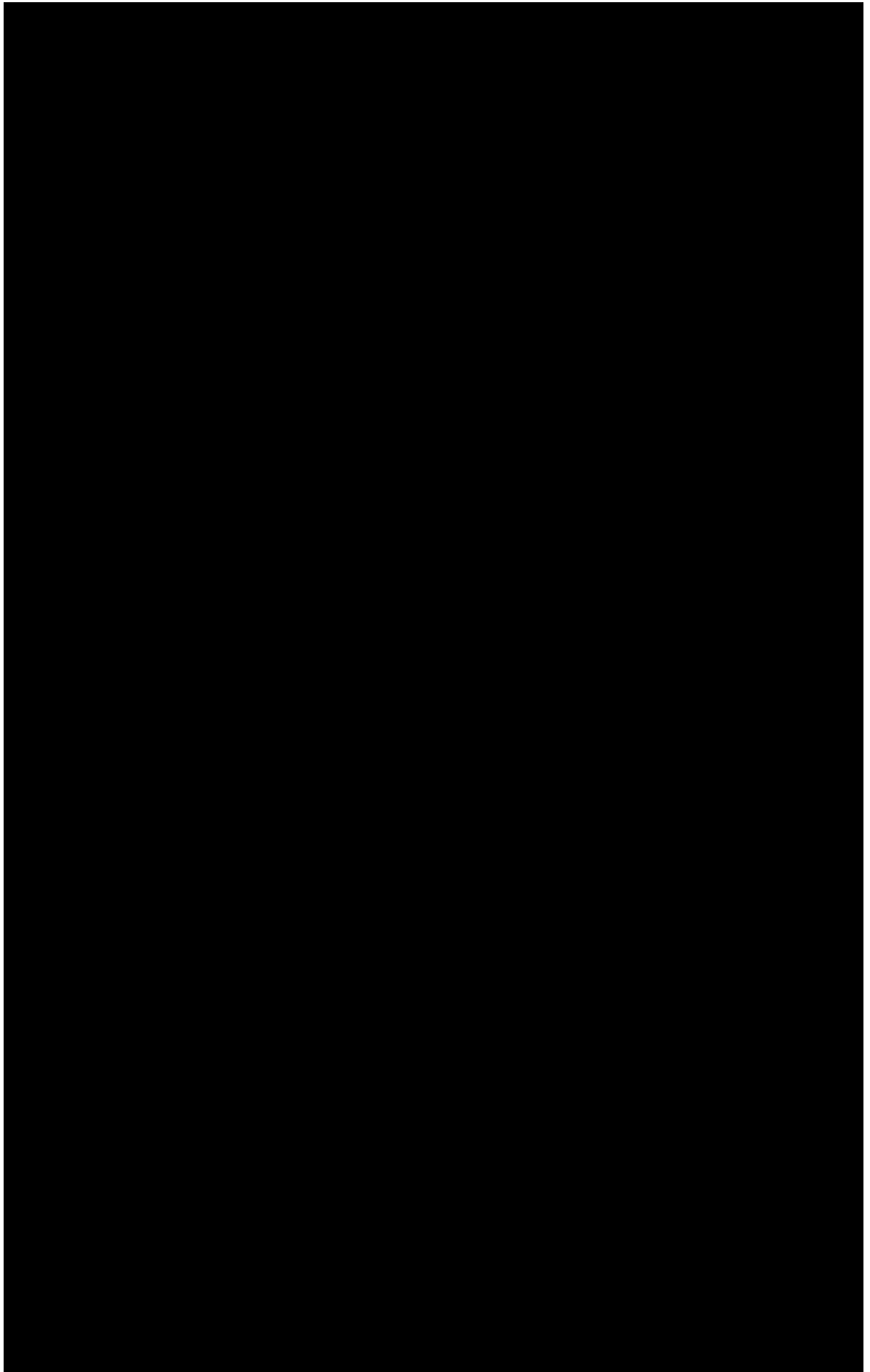
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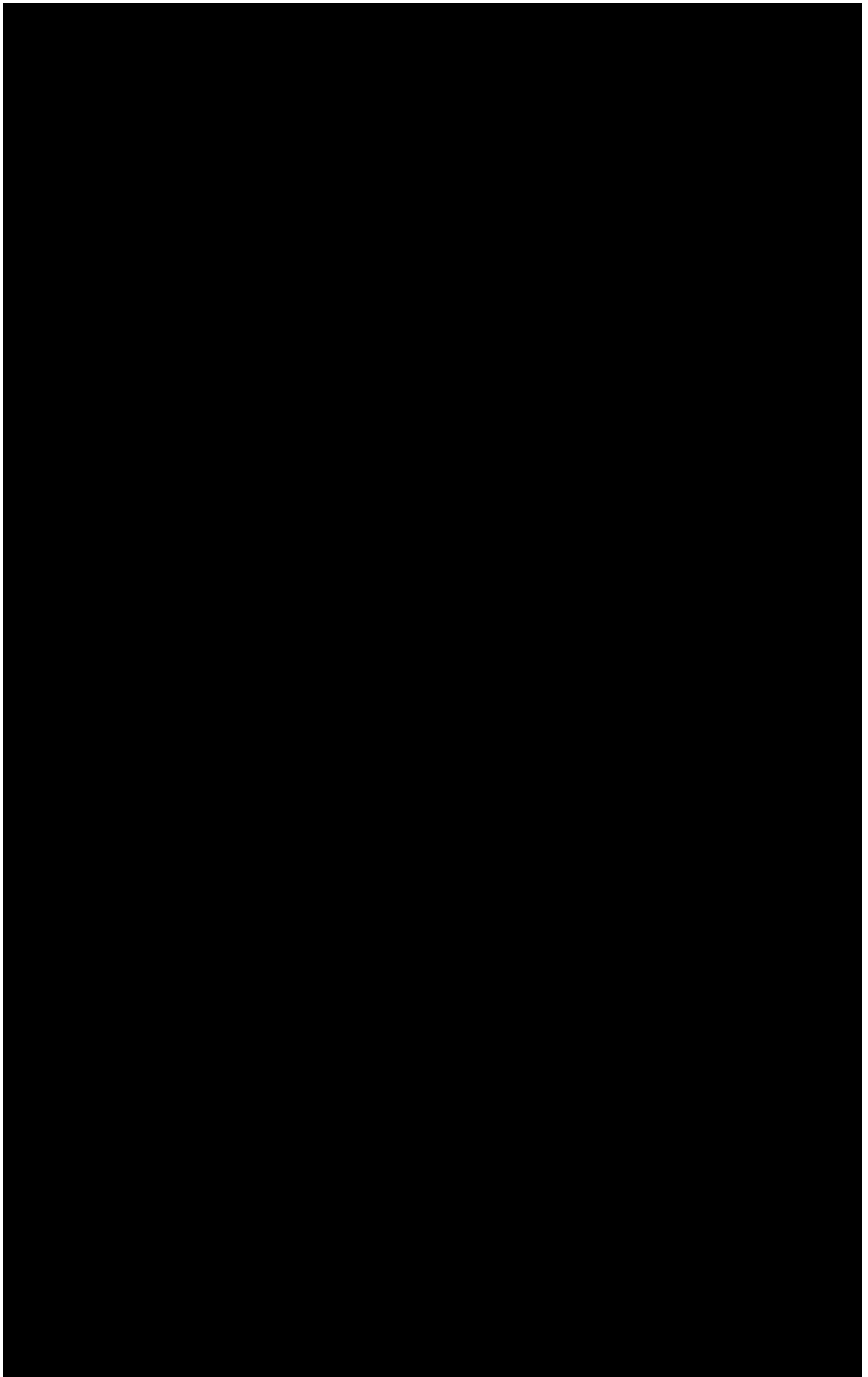
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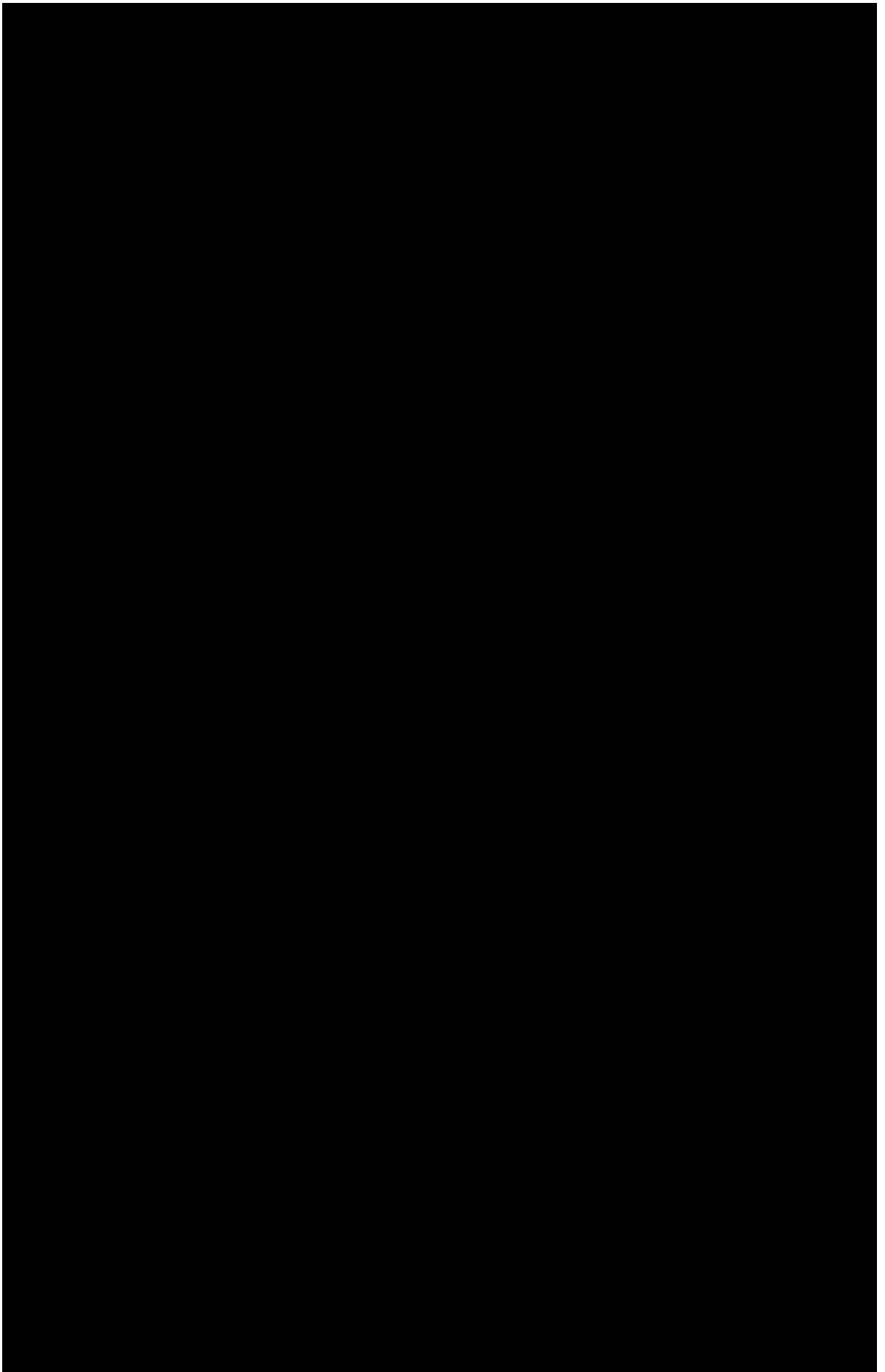
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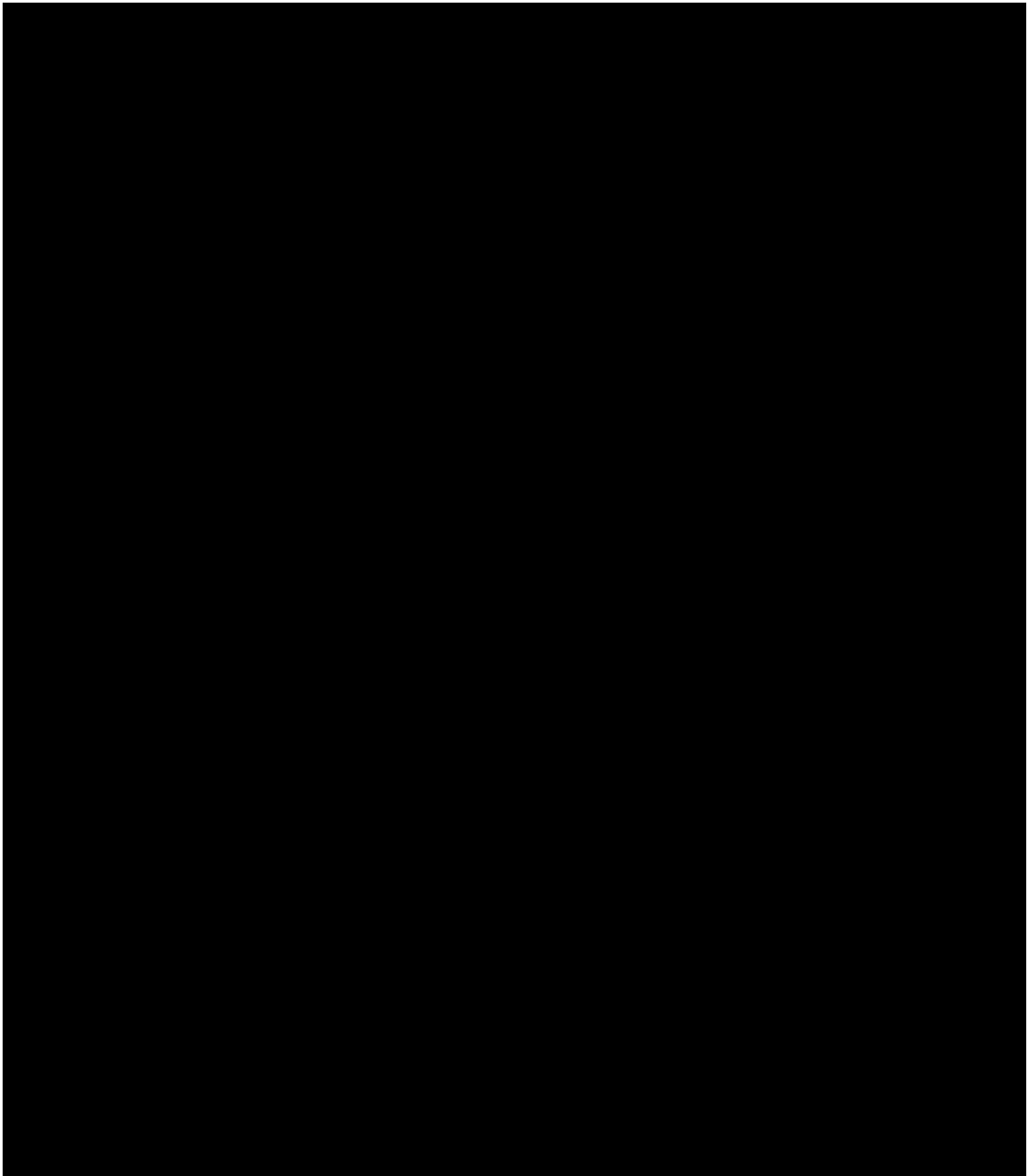
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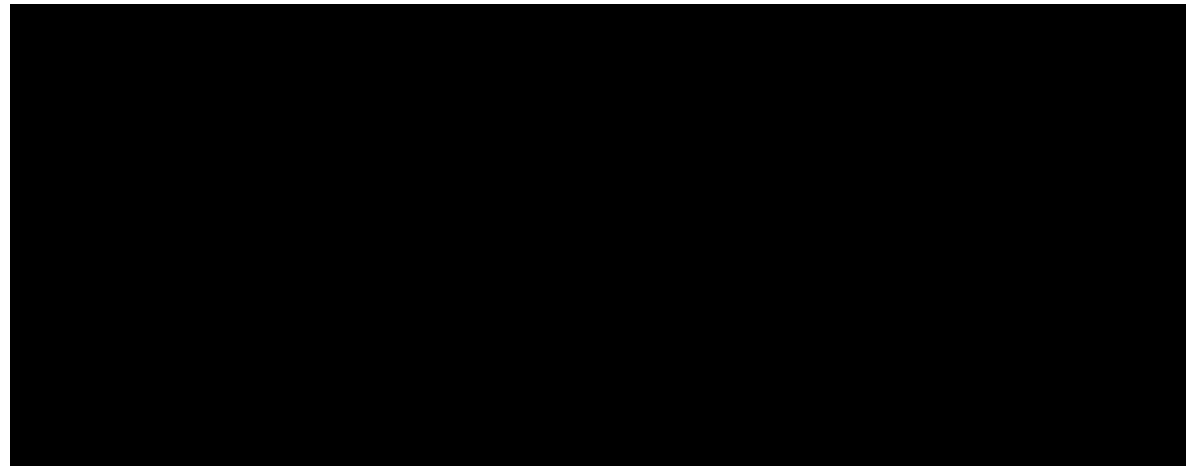
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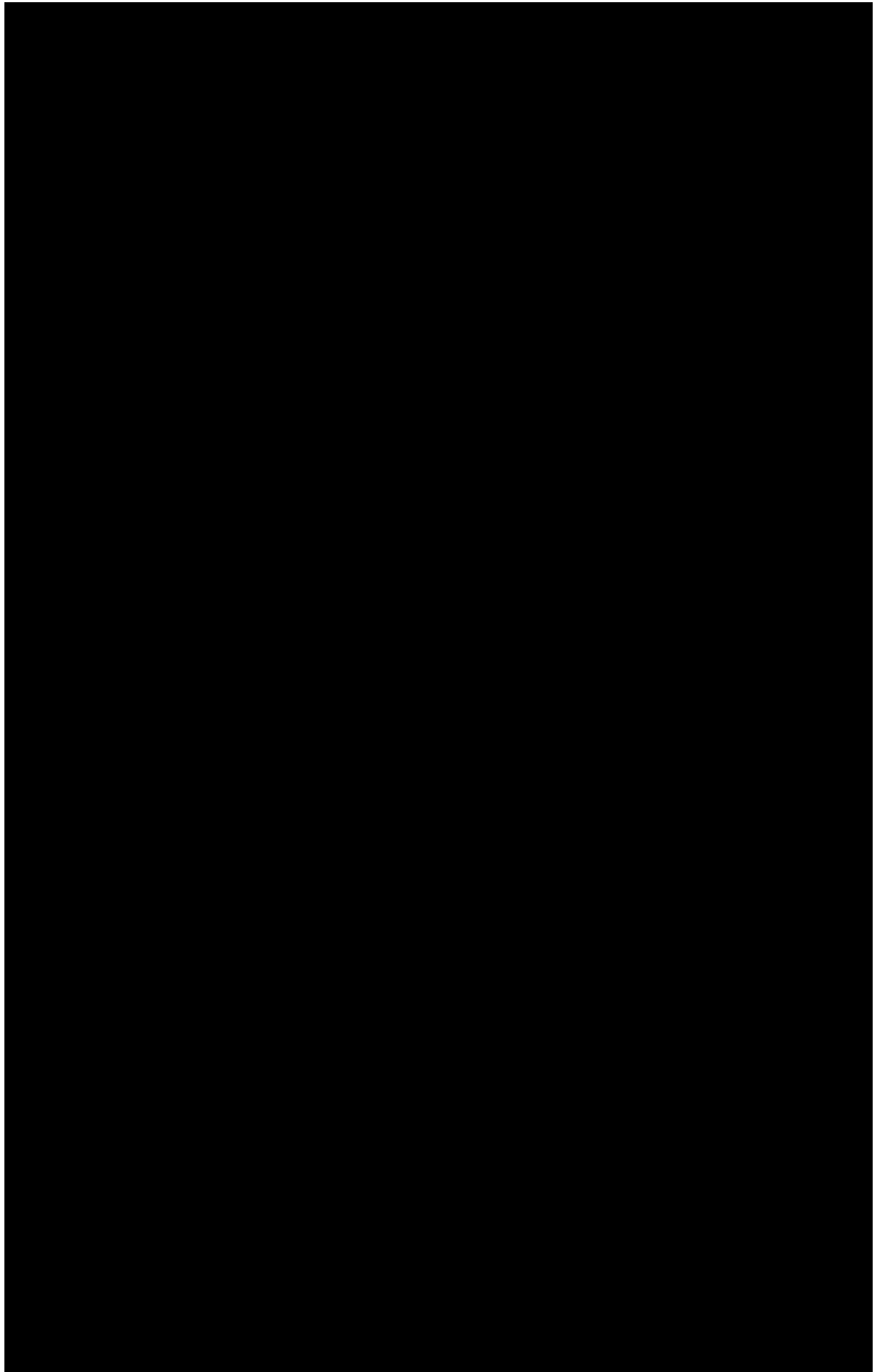
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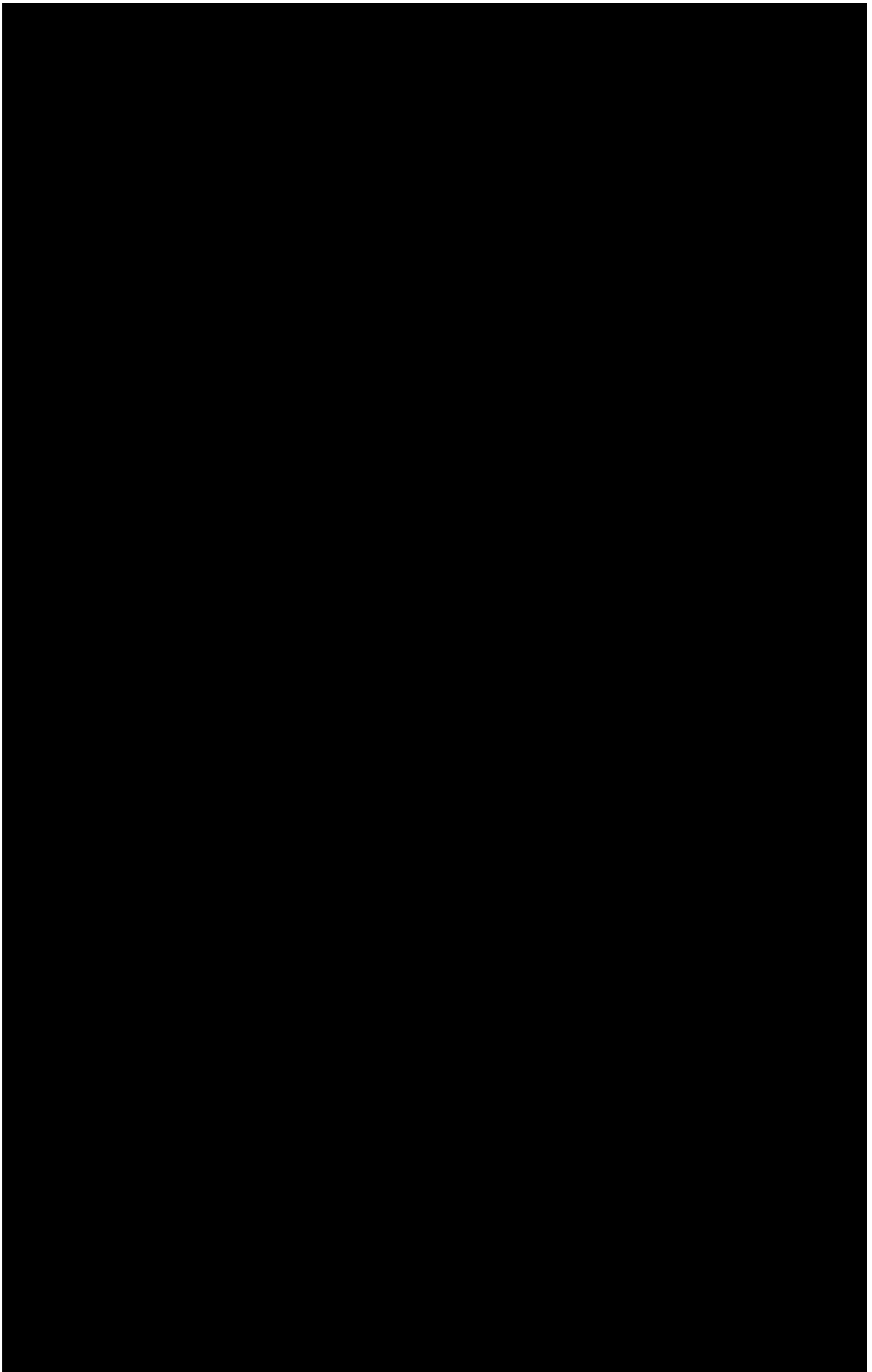
BY MR. ELSNER:



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11 BY MR. ELSNER:

12 Q. Okay.

13 THE WITNESS: Did I hit something?

14 MR. CLARK: No. I think he is switching
15 documents.

16 THE WITNESS: Oh, okay.

17 BY MR. ELSNER:

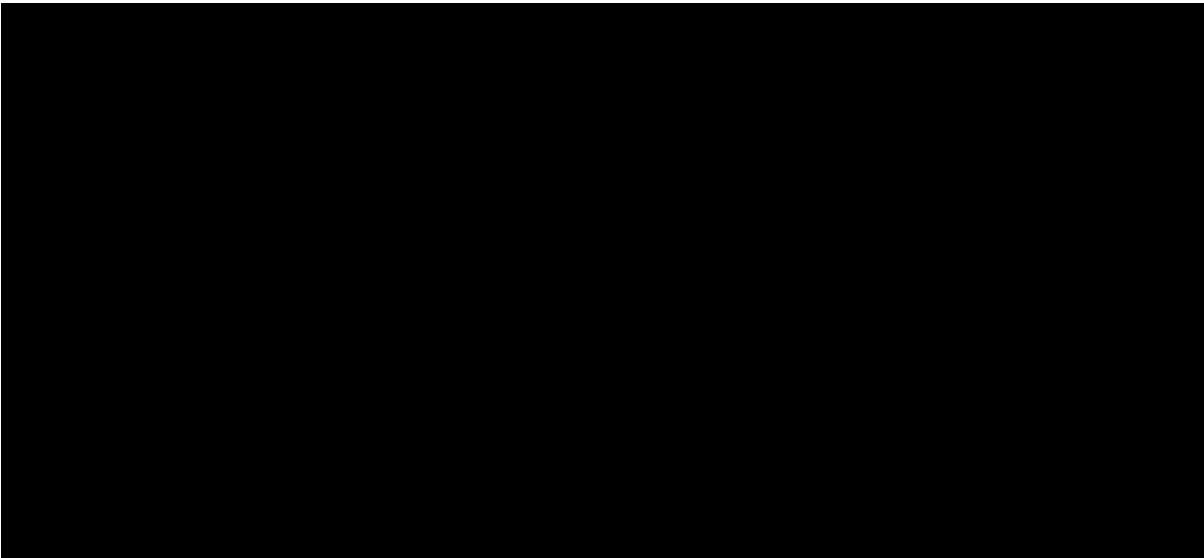
18 Q. Let me show you this document.

19 (WHEREUPON, a certain document was
20 marked CVS - Elsner Deposition
21 Exhibit No. 17, for identification,
22 as of 01/24/2019.)

23 BY MR. ELSNER:

24 Q. This is Exhibit 17.

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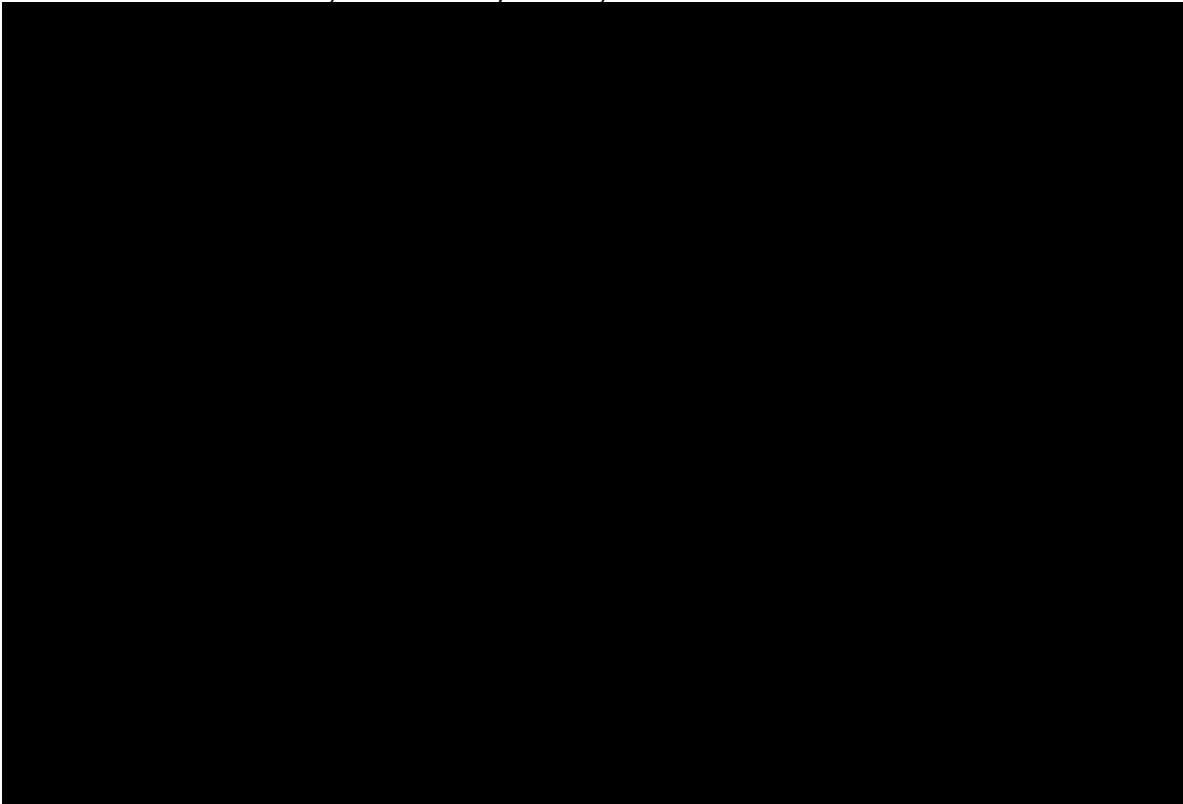


Q. Okay.

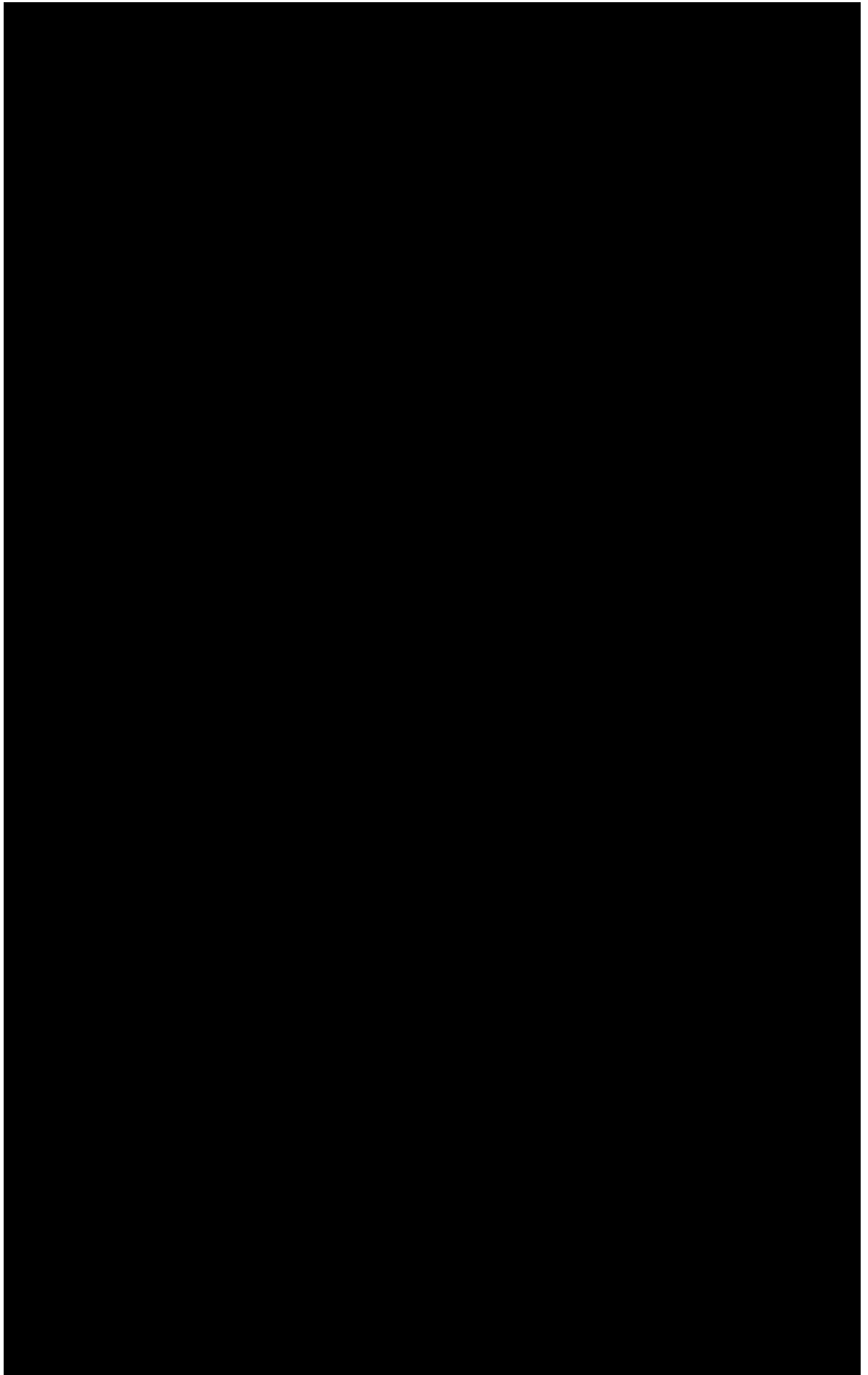
A. Who is Cassandra? Is she a -- was she a CVS employee?

Q. I don't know. I -- I'm not sure. I believe she is because it says CVS Caremark Exchange Administrative Group.

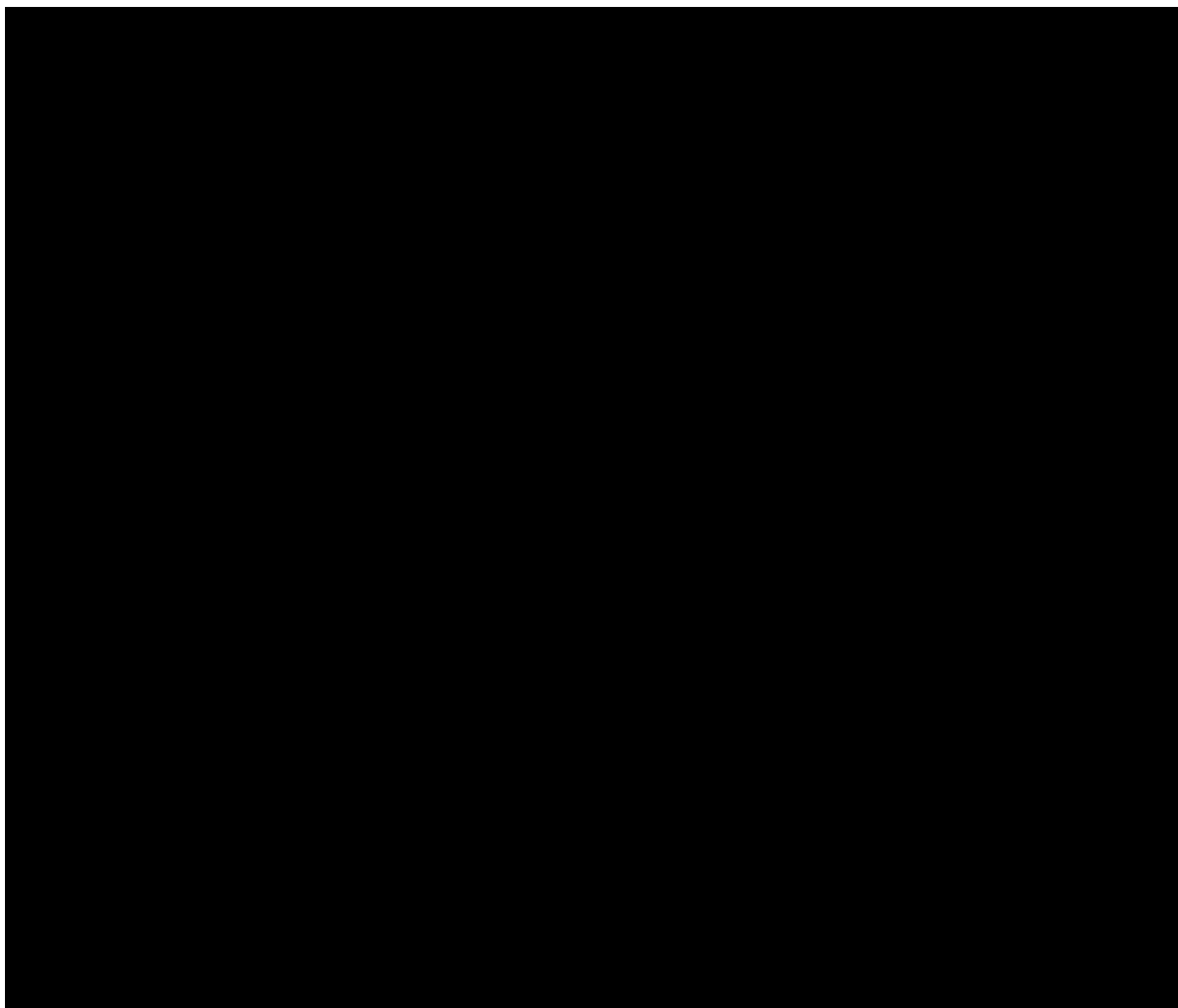
A. Okay. Yeah, okay.



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14 Q. Do you -- do you --

15 MR. ELSNER: Let me see Exhibit 285.

16 BY THE WITNESS:

17 A. You know, when we used to have an auditor
18 to come into our plant, we'd turn the heat up
19 sometimes to make them -- so they would quit the audit
20 early.

21 BY MR. ELSNER:

22 Q. I can promise you that's not the intent,
23 because as difficult it is for you, it also is for me.

24 A. I know, I was going to say, you can take

1 your coat off, you know, I won't be offended.

2 Q. I probably could, but I'm not going to.

3 (WHEREUPON, a certain document was
4 marked CVS - Elsner Deposition
5 Exhibit No. 18, for identification,
6 as of 01/24/2019.)

7 BY MR. ELSNER:

8 Q. This is Exhibit 18. I'm sorry. I did
9 that backwards.

10 MR. CLARK: And just for the record, that
11 comment referred to the temperature in the room.

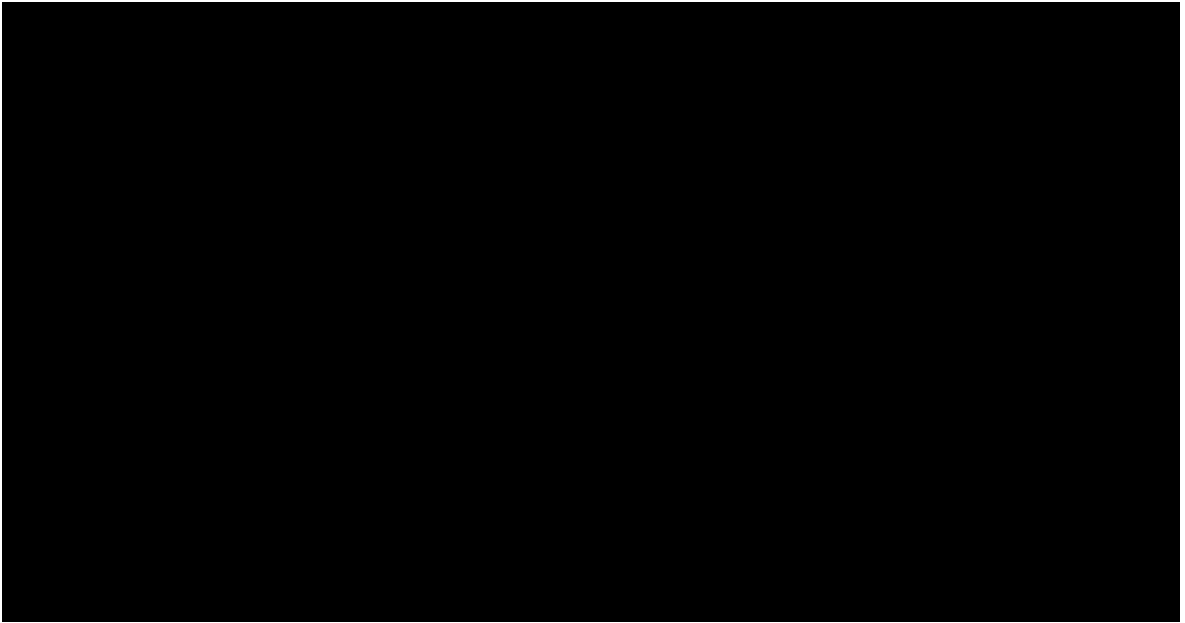
12 MR. ELSNER: Yeah.

13 MR. CLARK: The literal temperature in the room.

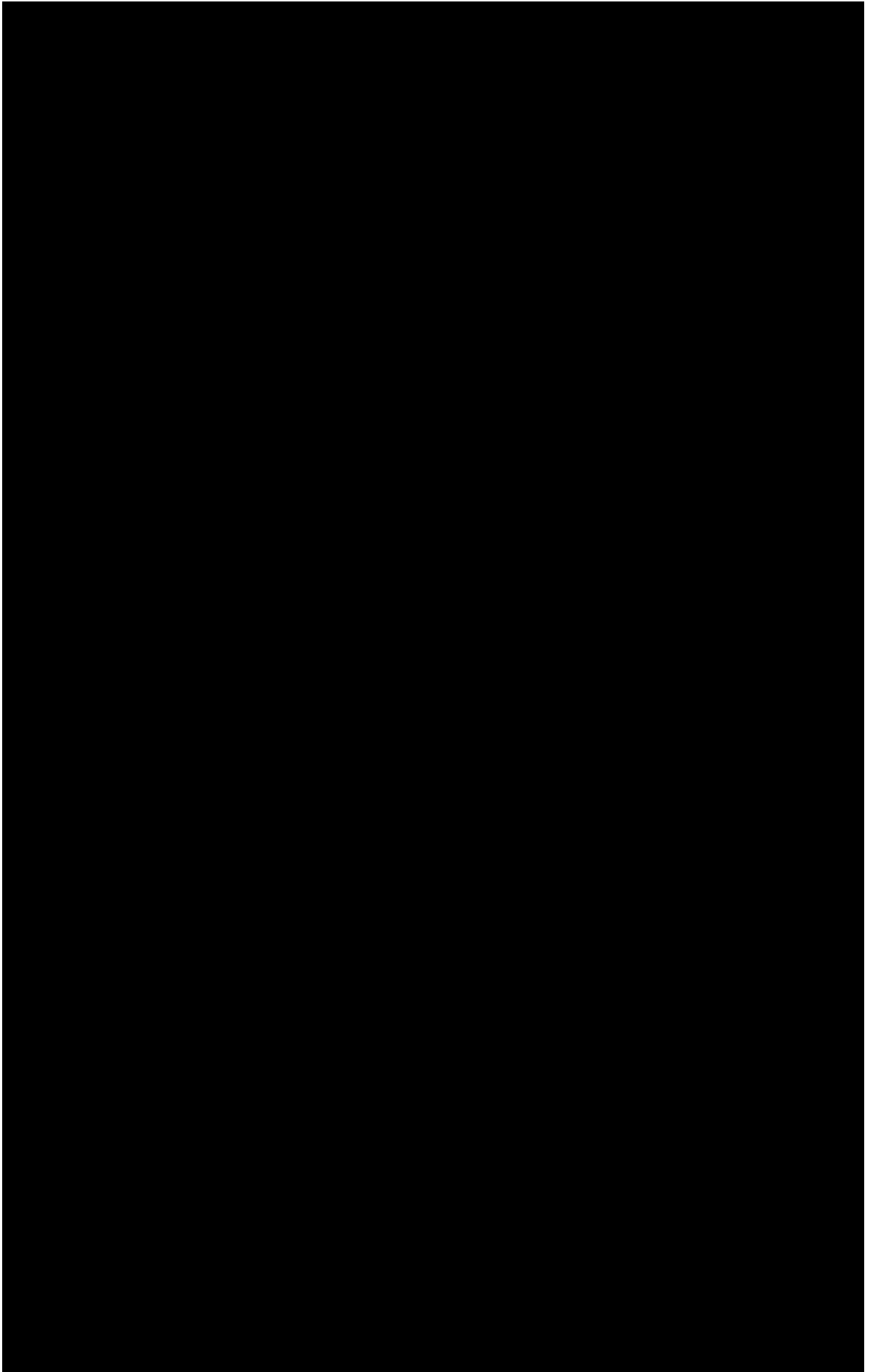
14 MR. ELSNER: I don't think -- I don't think
15 anyone would be confused by that.

16 BY MR. ELSNER:

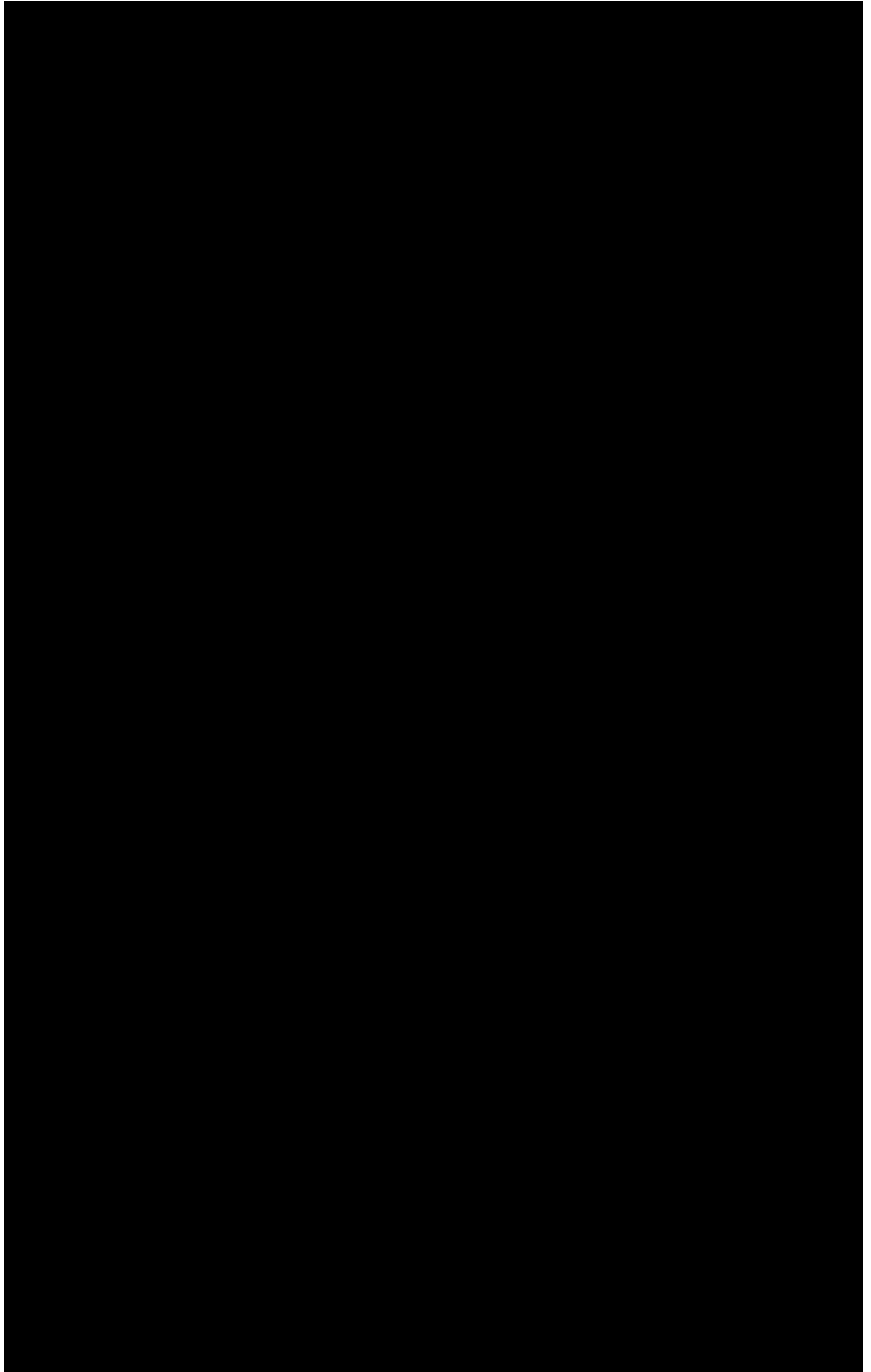
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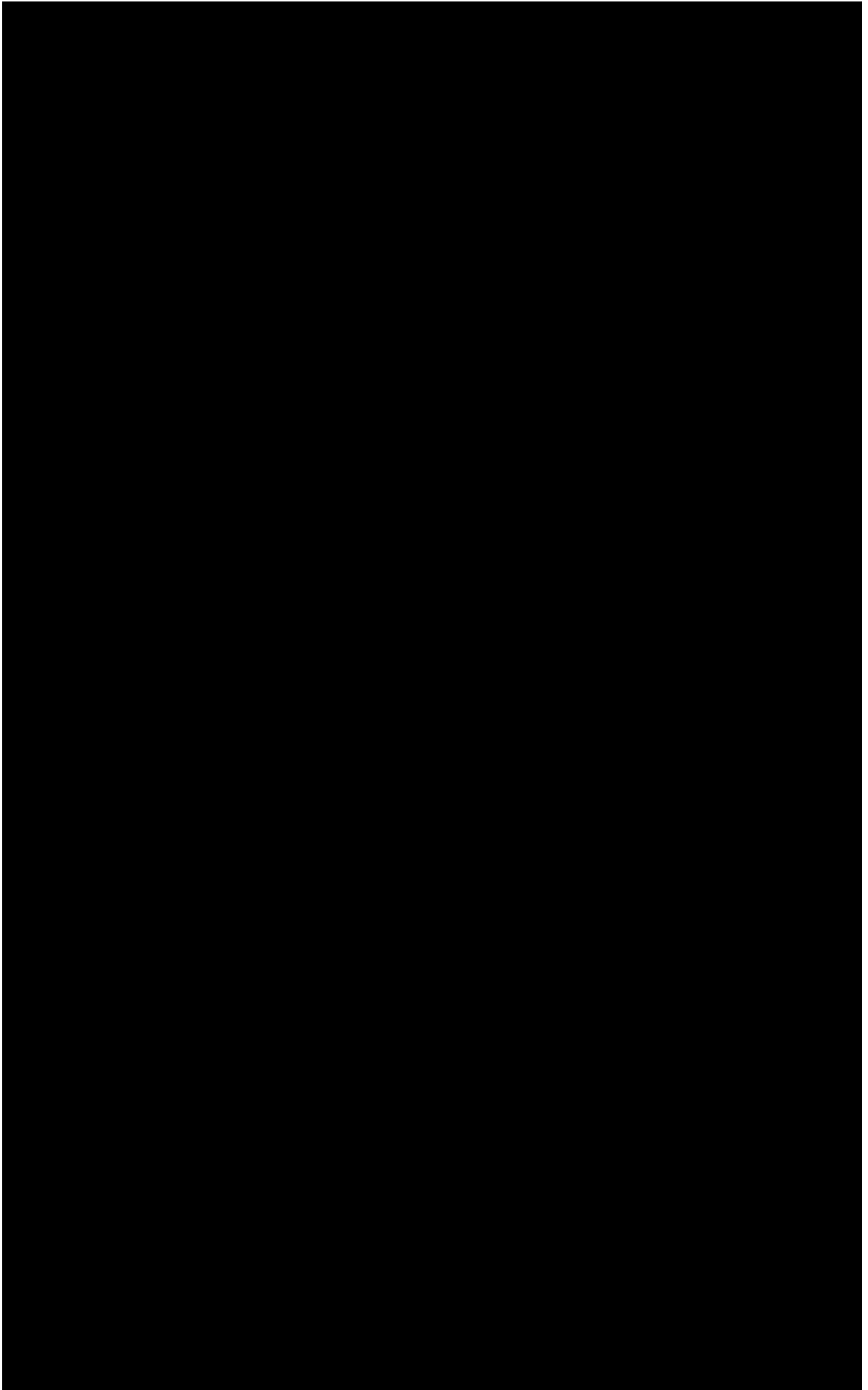
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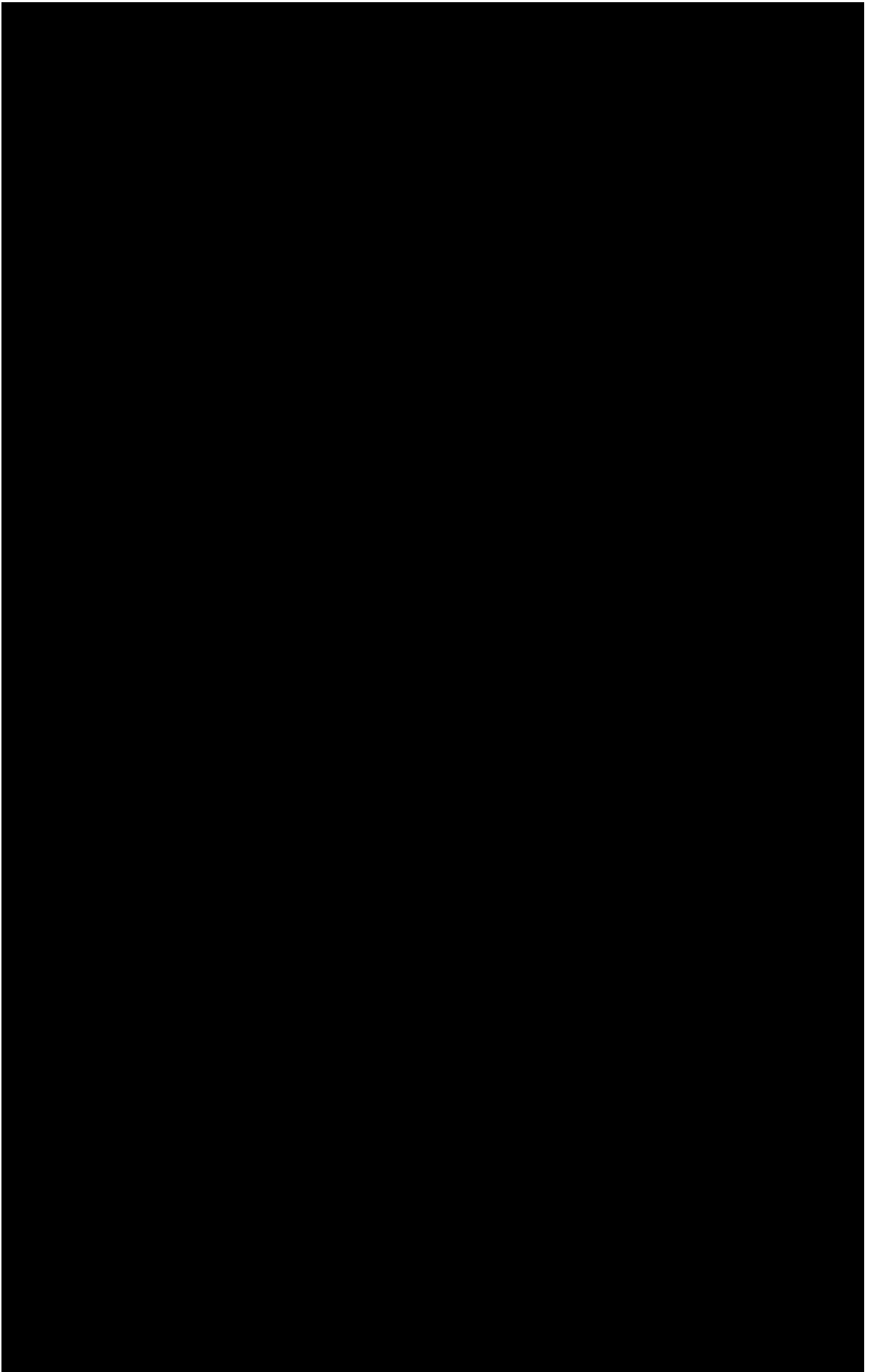
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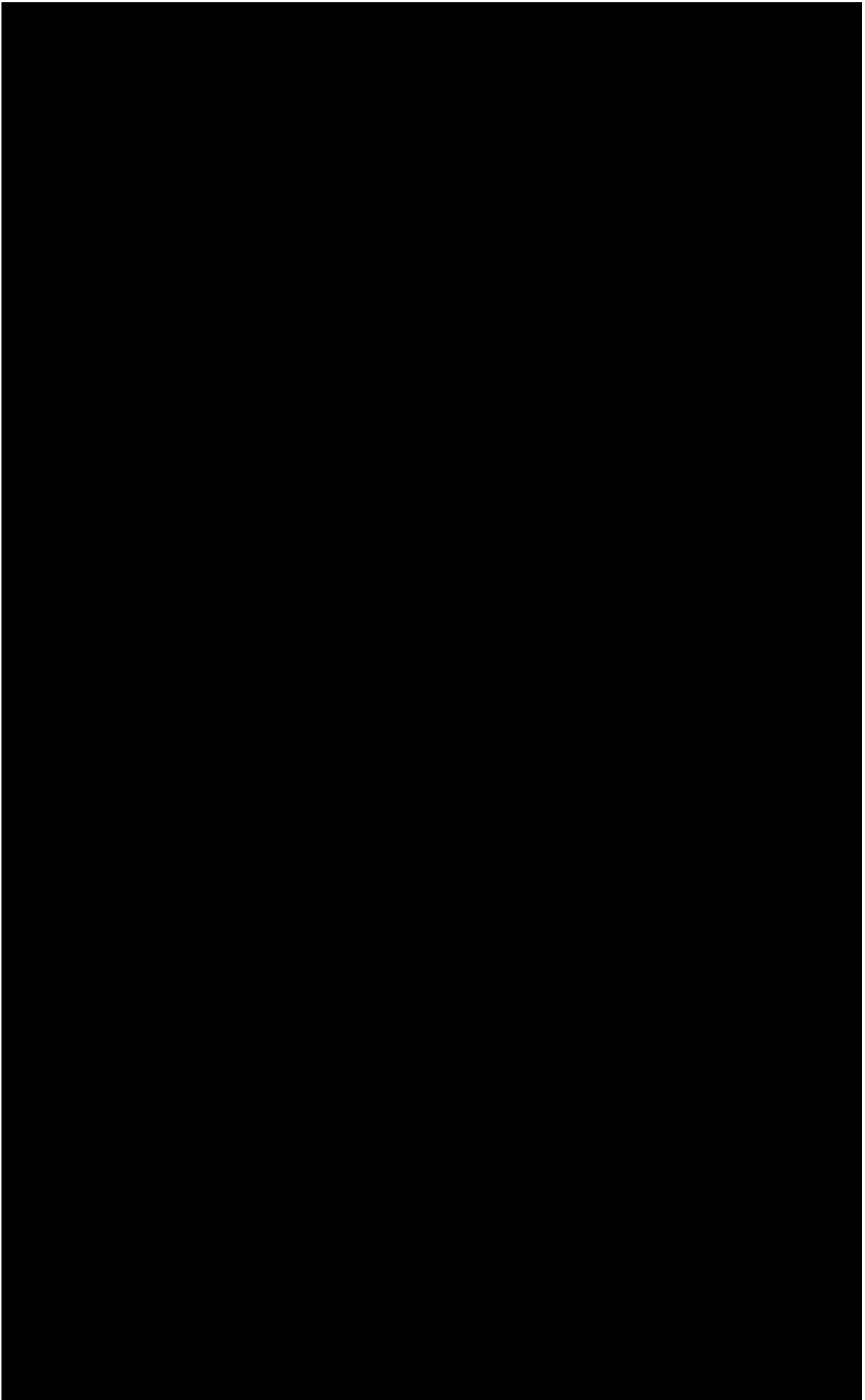
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1 MR. ELSNER: Okay. Why don't we take a quick
2 break.

3 THE VIDEOGRAPHER: We are off the record at
4 12:14 p.m.

5 (WHEREUPON, a recess was had
6 from 12:14 to 1:13 p.m.)

7 THE VIDEOGRAPHER: We are back on the record at
8 1:13 p.m.

9 BY MR. ELSNER:

10 Q. Mr. Baker, six months after you joined
11 CVS, Aaron Burtner resigned from CVS, is that right?

12 A. Correct.

13 Q. Okay.

14 A. I think -- well, I know -- yeah, he did,
15 yeah.

16 Q. Okay. Do you know, did he resign or --

17 A. Well, he -- yeah, because he went
18 through -- he got a job offer from -- somebody he knew
19 before got him a job by Amazon.

20 Q. Okay. I'm going to show you Exhibit 19.

21 (WHEREUPON, a certain document was
22 marked CVS - Elsner Deposition
23 Exhibit No. 19, for identification,
24 as of 01/24/2019.)

1 BY MR. ELSNER:

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6 Pike --

7 A. Okay.

8 Q. -- in this e-mail?

9 A. And who was Crystal Pike, anyway?

10 Q. Well, I take it from the second paragraph
11 here, it says:

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23 Q. Okay. And so anyway, he -- he had --

24 MR. MILLER: This is Jake Miller on the phone.

1 It appears that the phone was just un-muted.

2 Was the deposition started with the phone
3 still muted after the lunch break?

4 MR. ELSNER: It was for about two questions.

5 We've established that his boss resigned in June 26th,
6 2013. I'm going to --

7 MR. MILLER: Do you -- do you have a rough idea
8 of how long the phone was on mute during the actual
9 deposition?

10 MR. CLARK: Two minutes.

11 MR. ELSNER: Maybe a minute, two minutes.

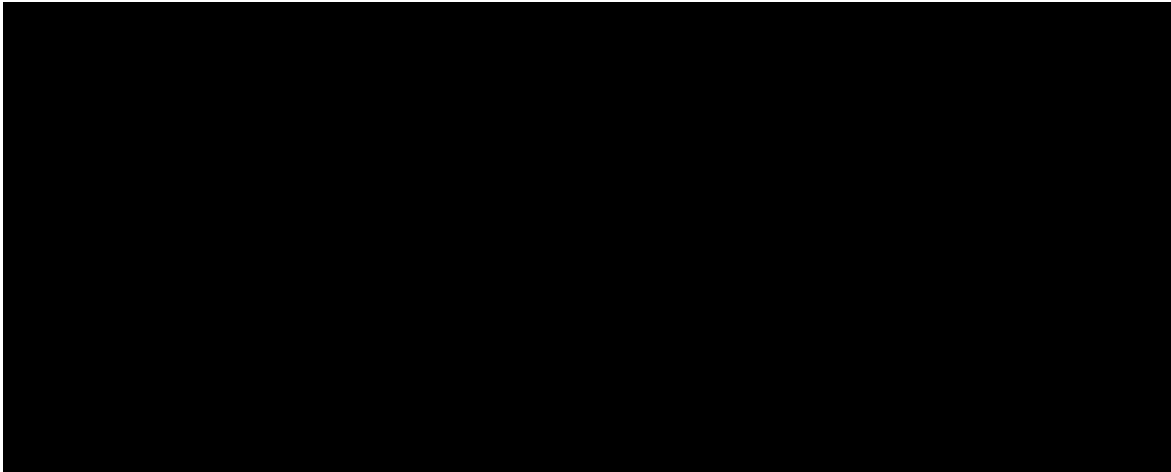
12 MR. MILLER: Okay. Thank you.

13 MR. ELSNER: Your objections will be preserved.

14 (WHEREUPON, a certain document was
15 marked CVS - Elsner Deposition
16 Exhibit No. 20, for identification,
17 as of 01/24/2019.)

18 BY MR. ELSNER:

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9 Q. Okay. So did Aaron -- did Aaron Burtner
10 ever discuss with you why he left CVS?

11 A. I'm sure he did. Because we went out --
12 the four of us went out for lunch every day. I think
13 he just had a better role, a better job.

14 Q. Did -- did he tell you he was leaving CVS
15 before he told CVS?

16 A. I don't remember.

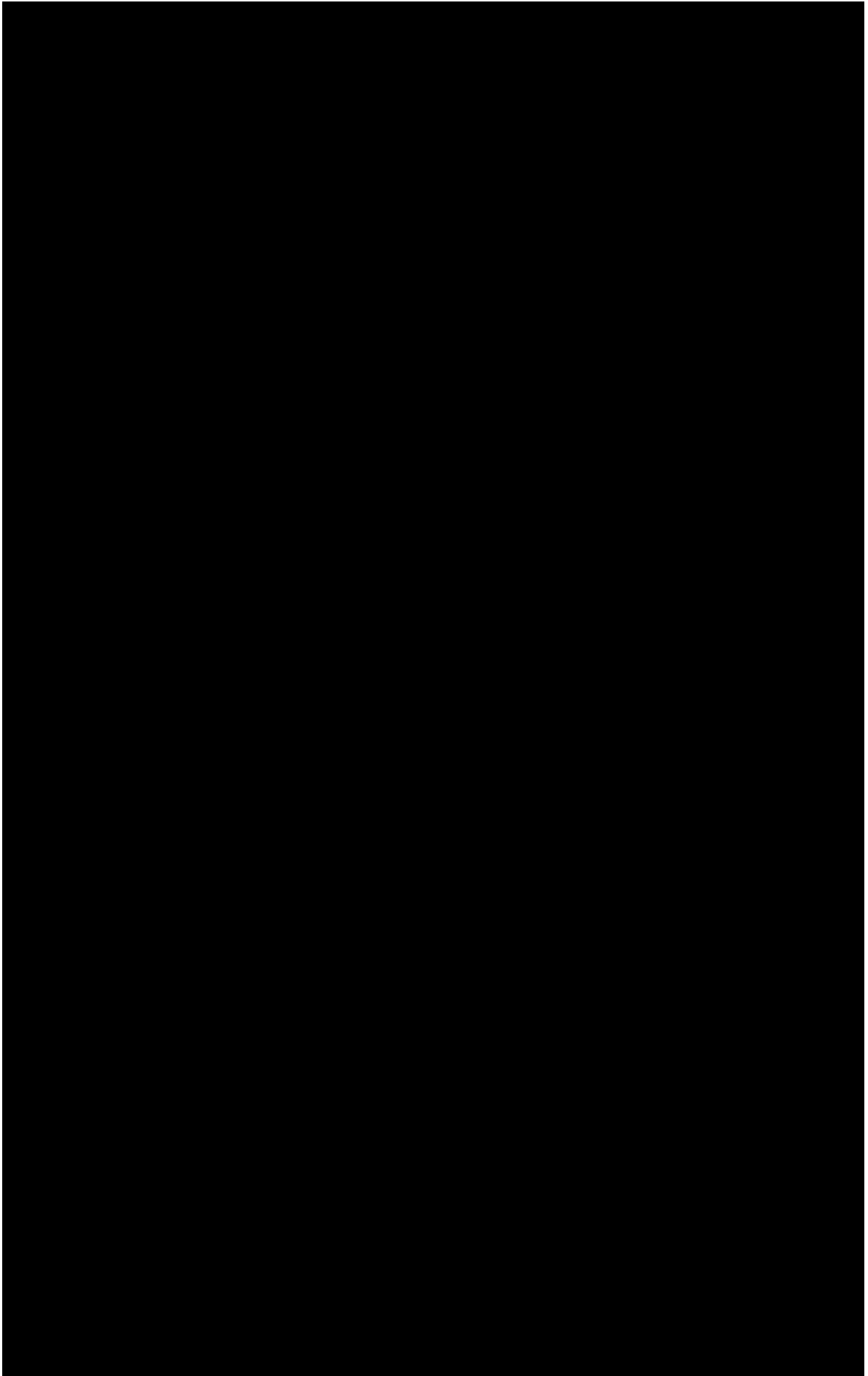
17 Q. Did he ever express to you during any of
18 those lunches any issues he was having with CVS
19 related to staffing or finances or anything?

20 A. No, no, no. I just think a nice -- a
21 really much better deal came up and he -- he went
22 there.

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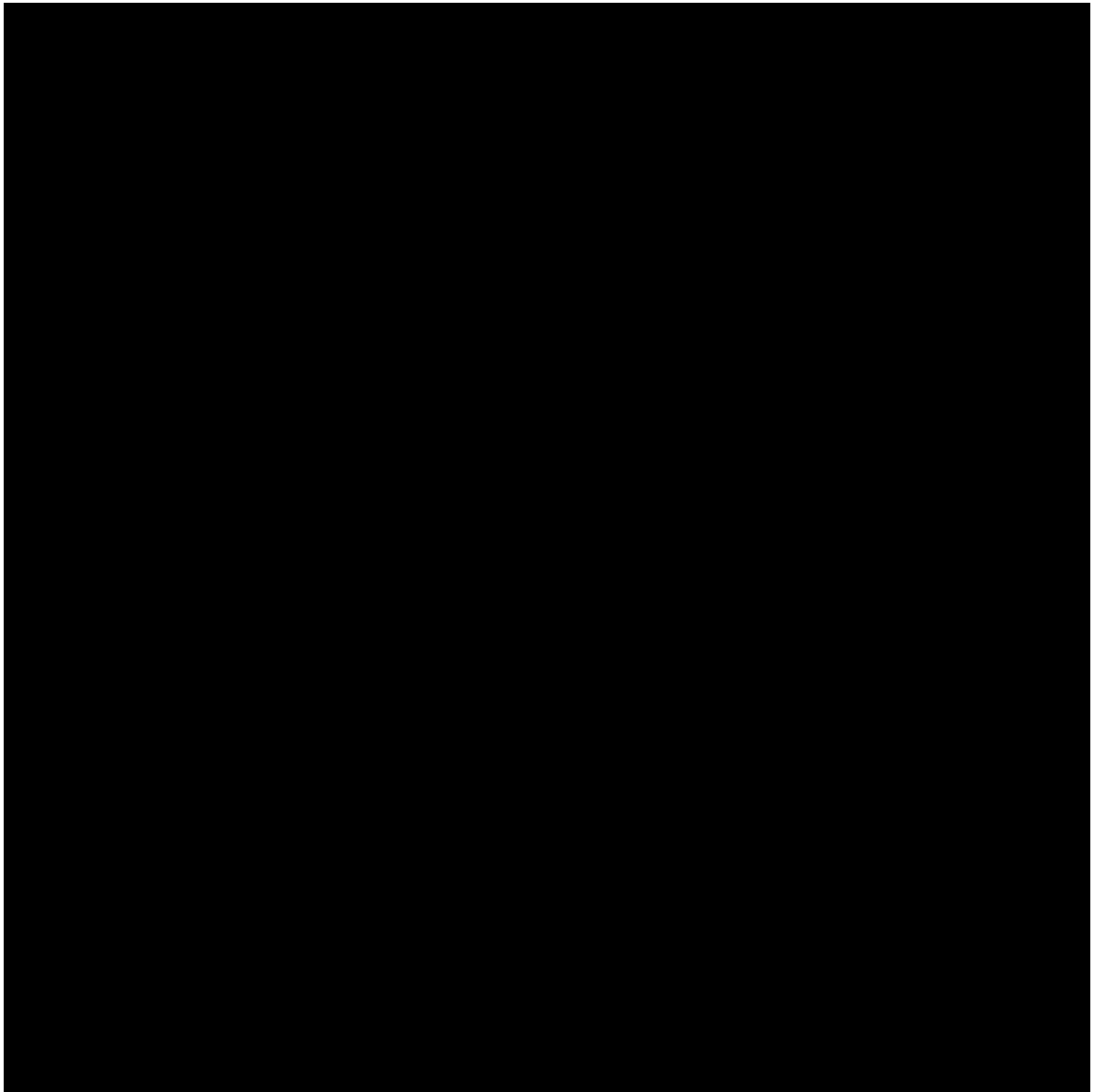


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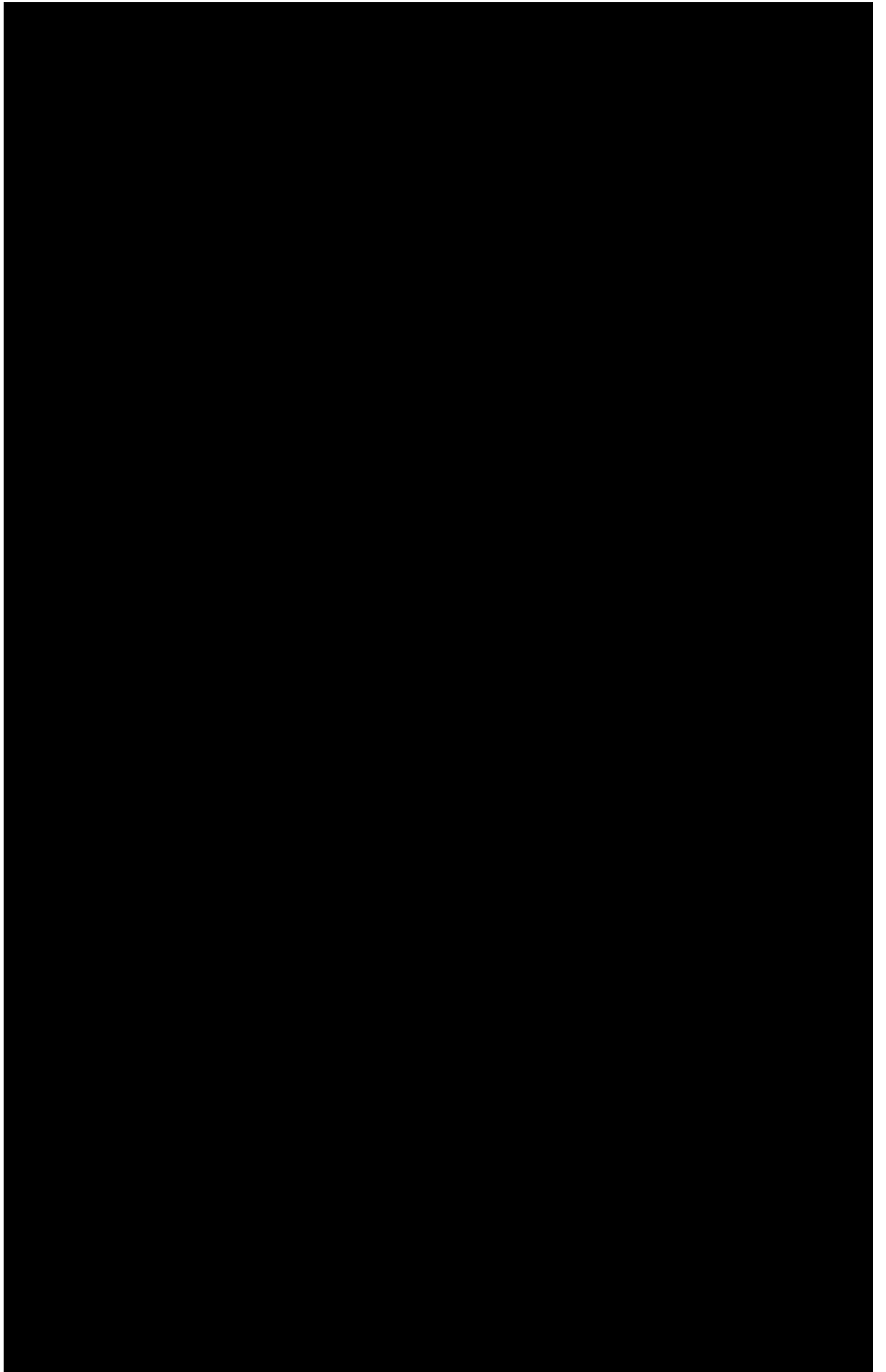


(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 21, for identification,
as of 01/24/2019.)

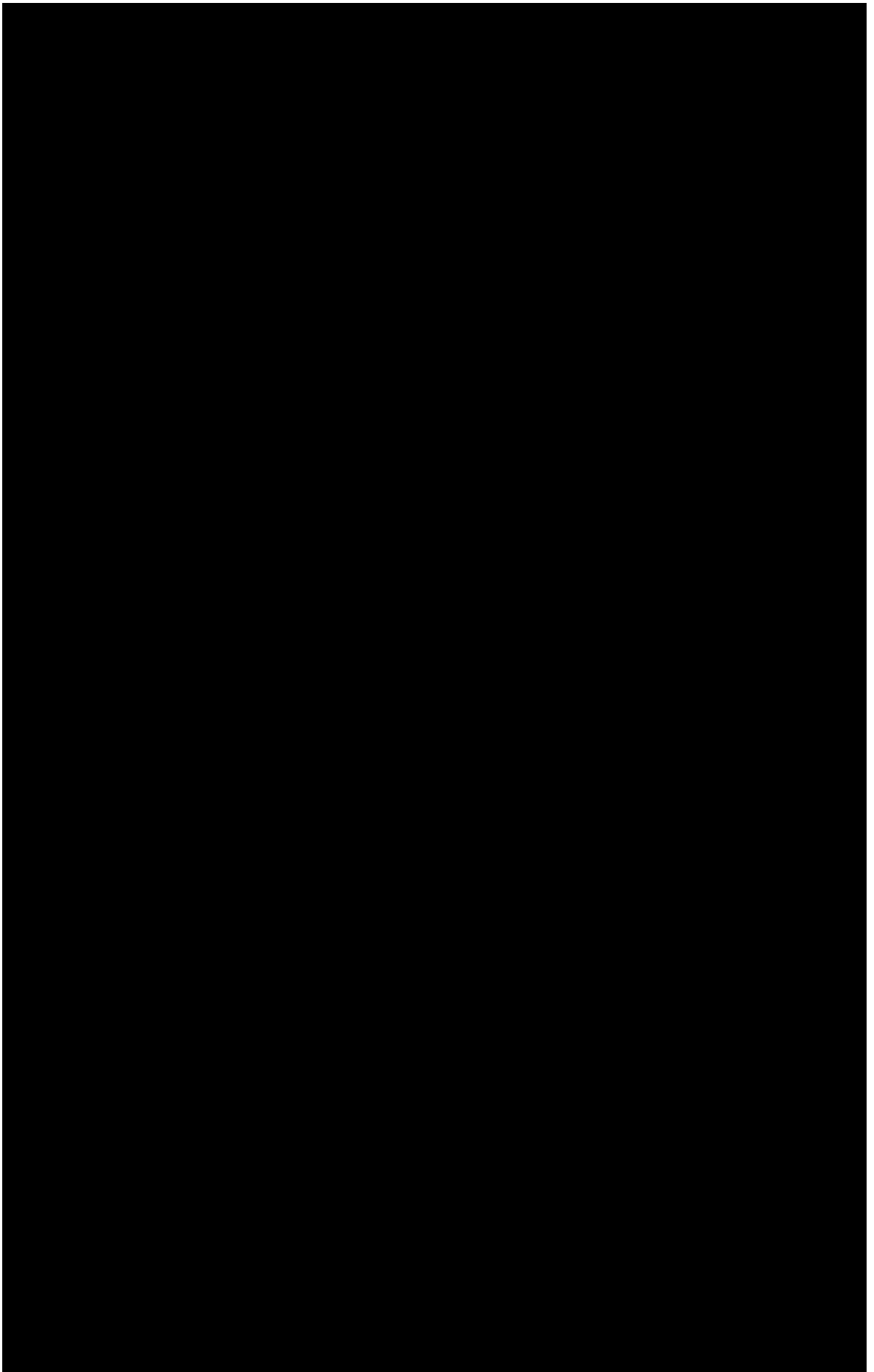
BY MR. ELSNER:



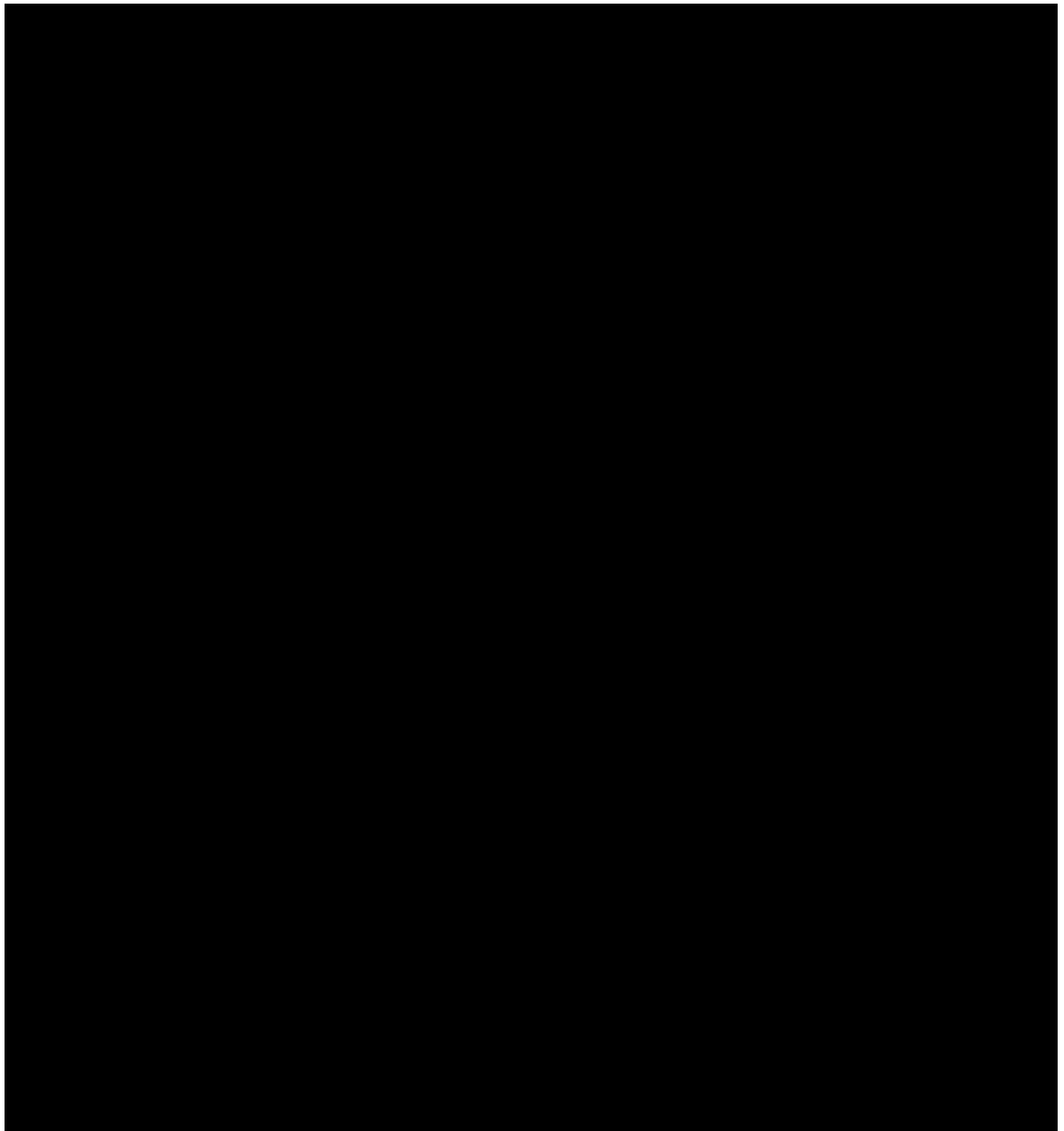
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17 BY THE WITNESS:

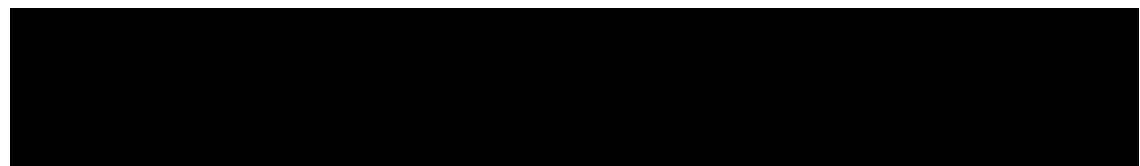
18 A. I don't remember, I mean.

19 BY MR. ELSNER:

20 Q. But she was working part-time, right?

21 A. No, I think what it was, she was working
22 full time just as a contractor. She wasn't -- you

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6 Q. This says in that -- well, Mark Nicastro
7 writes here that you assumed the duties of the
8 manager?

9 A. Yeah, he assumed that I was assuming to do
10 it. I mean, he didn't really -- I don't think he

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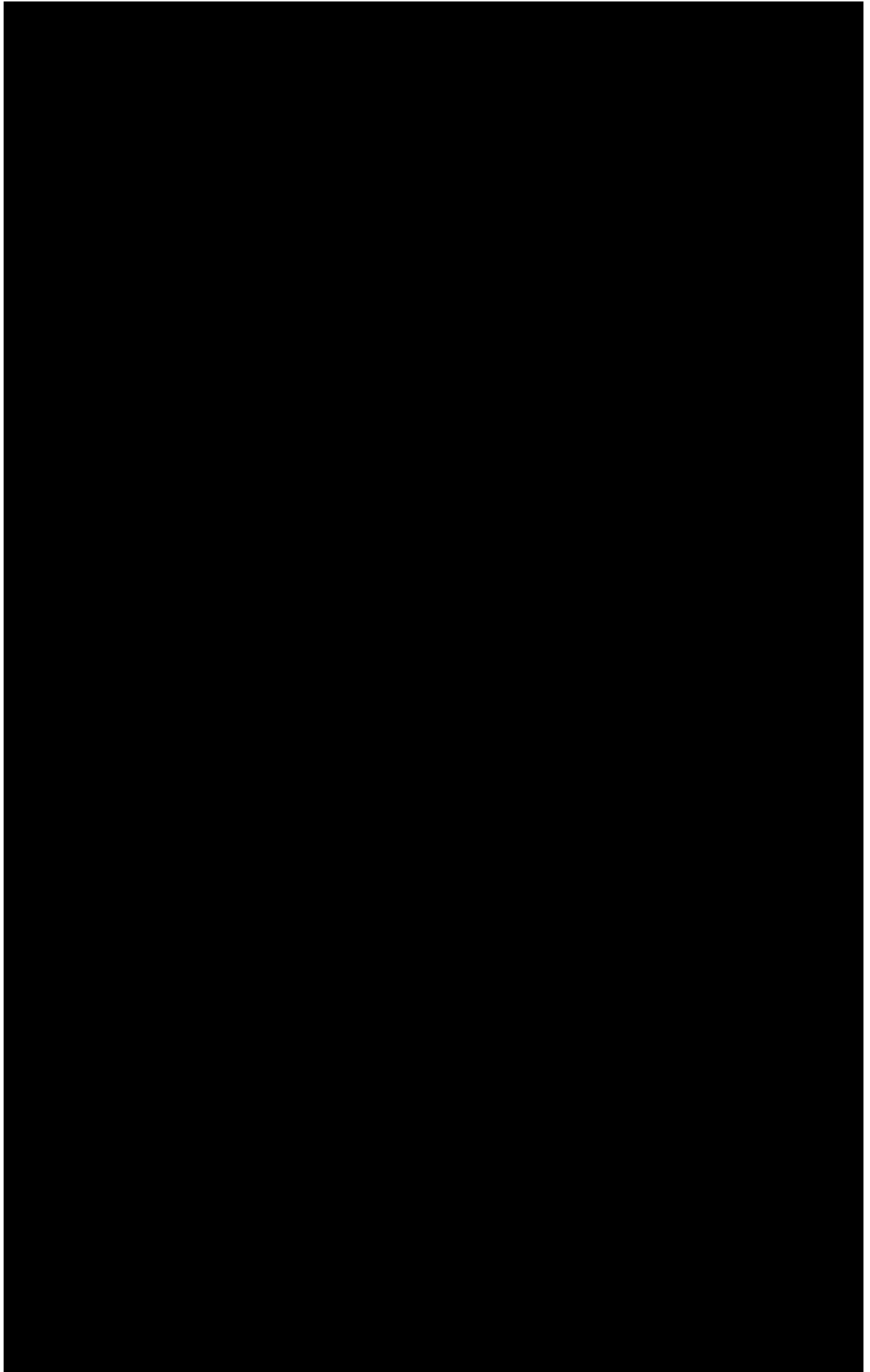
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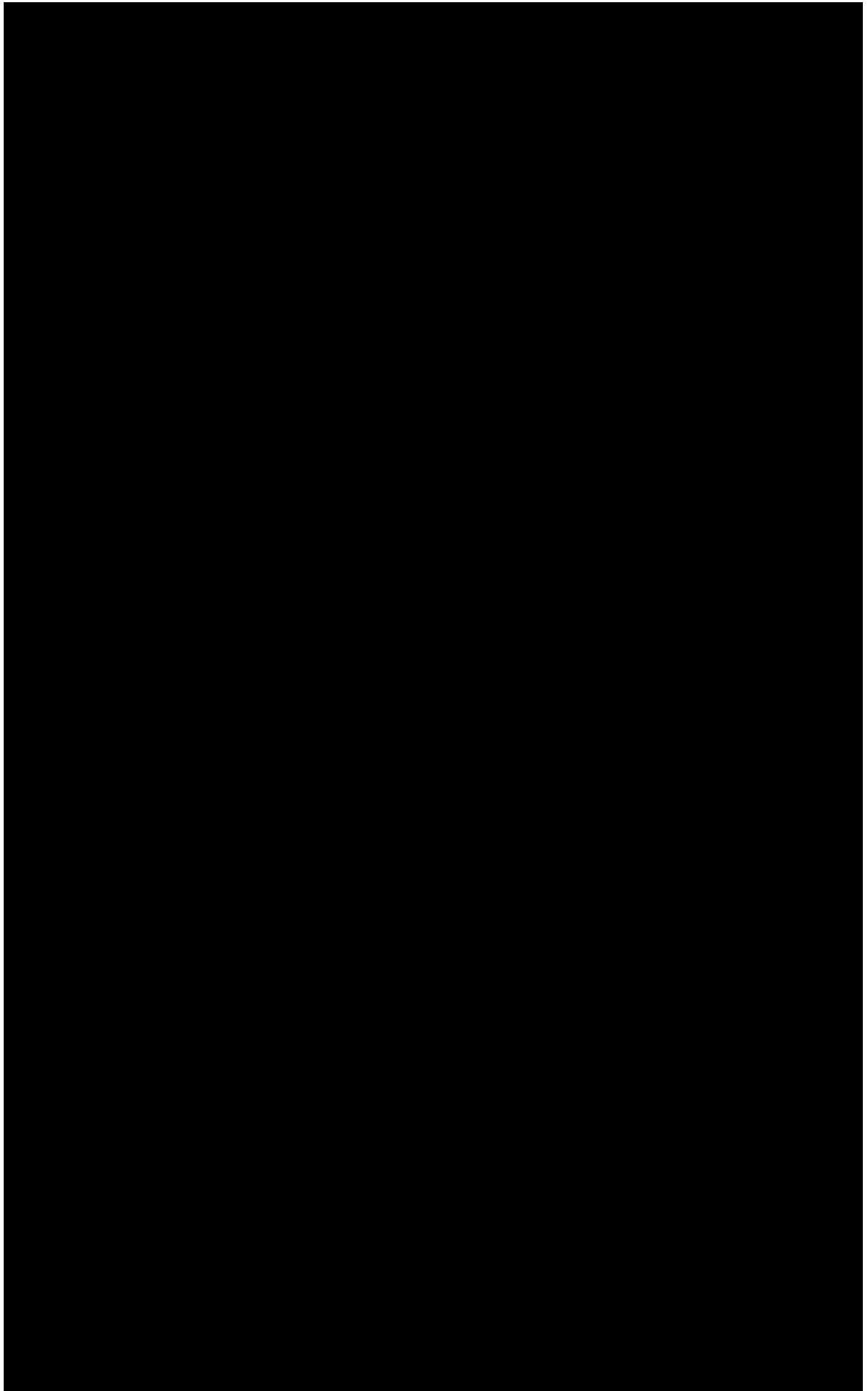
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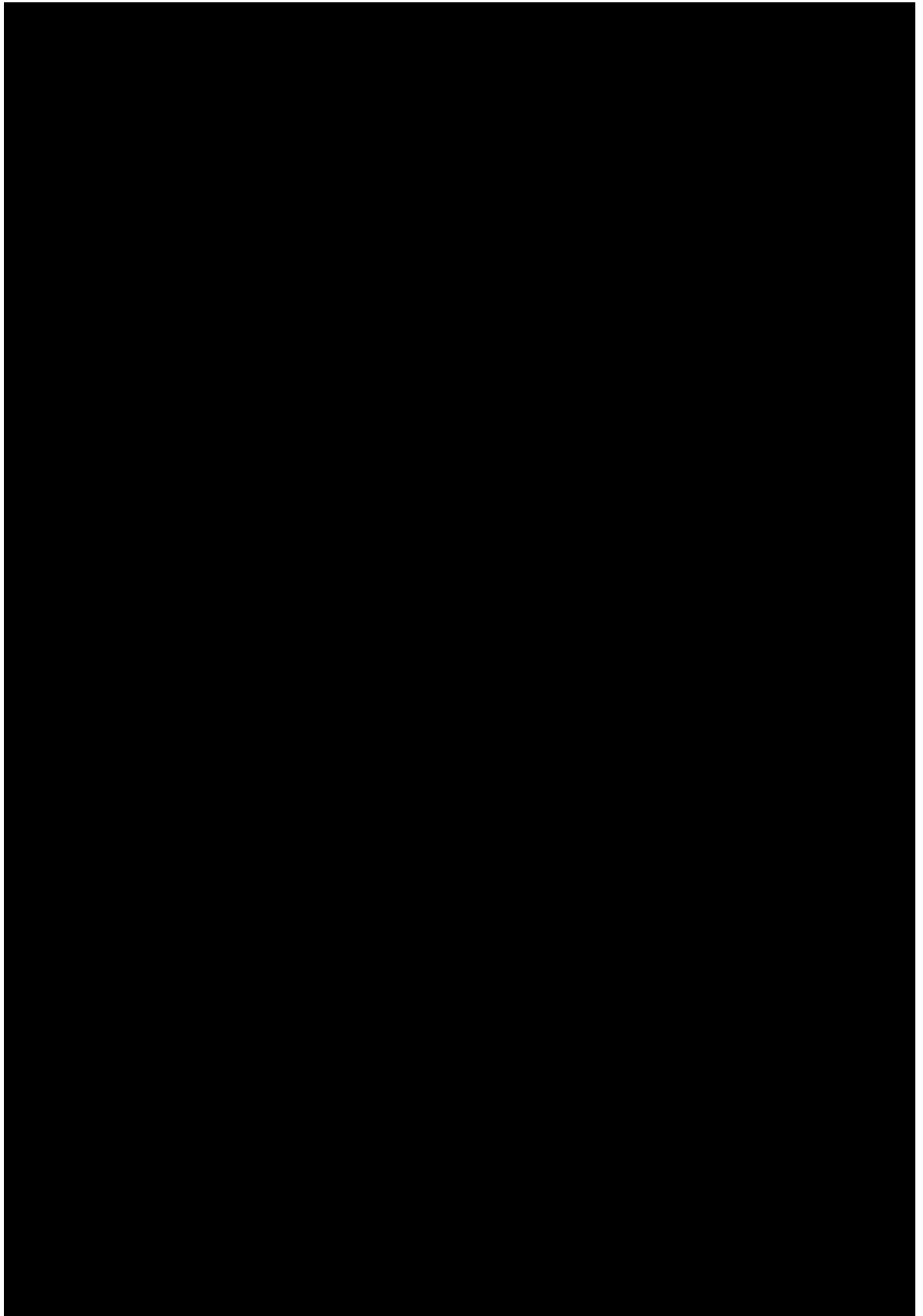
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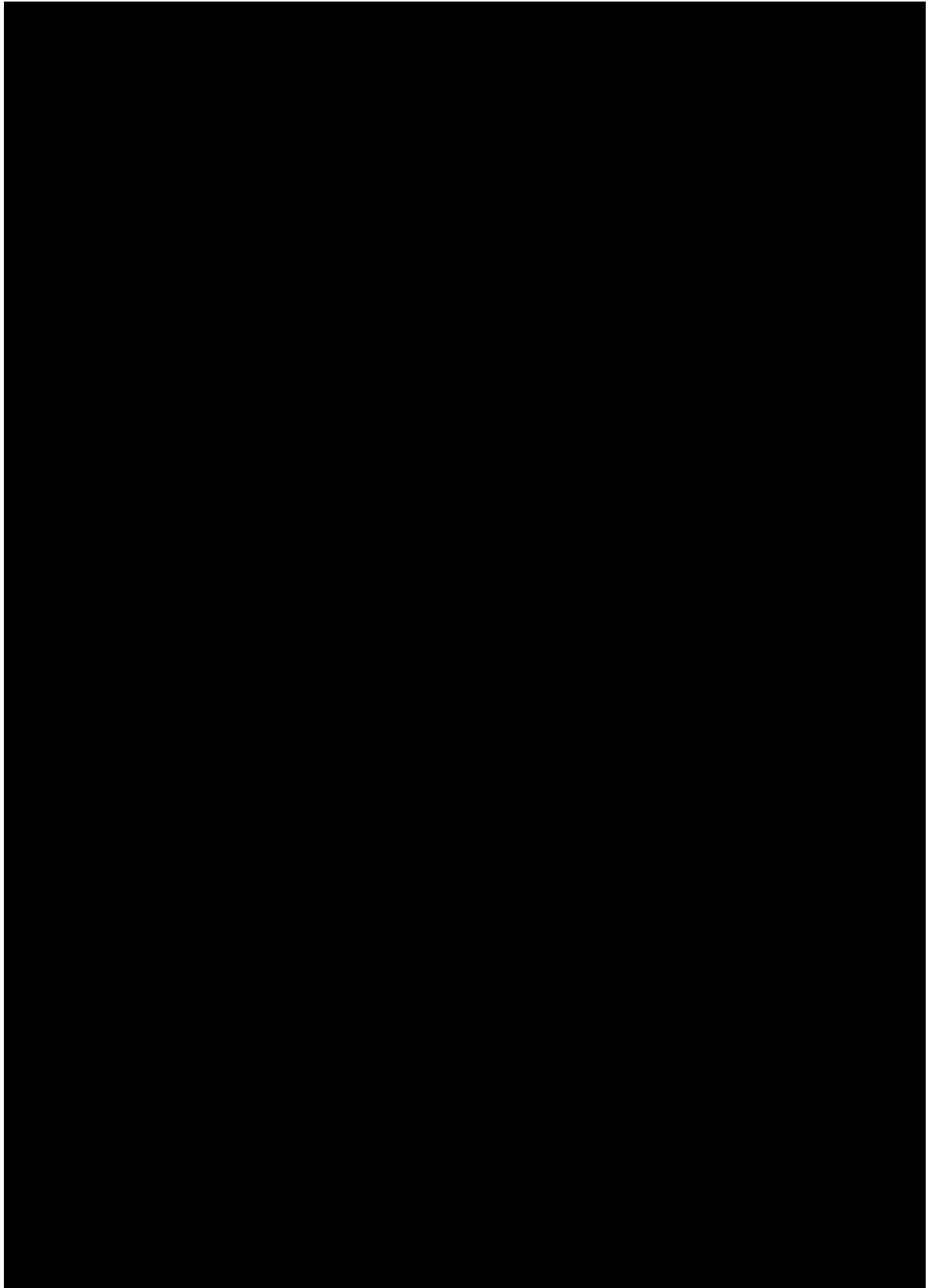


23 (WHEREUPON, a certain document was
24 marked CVS - Elsner Deposition

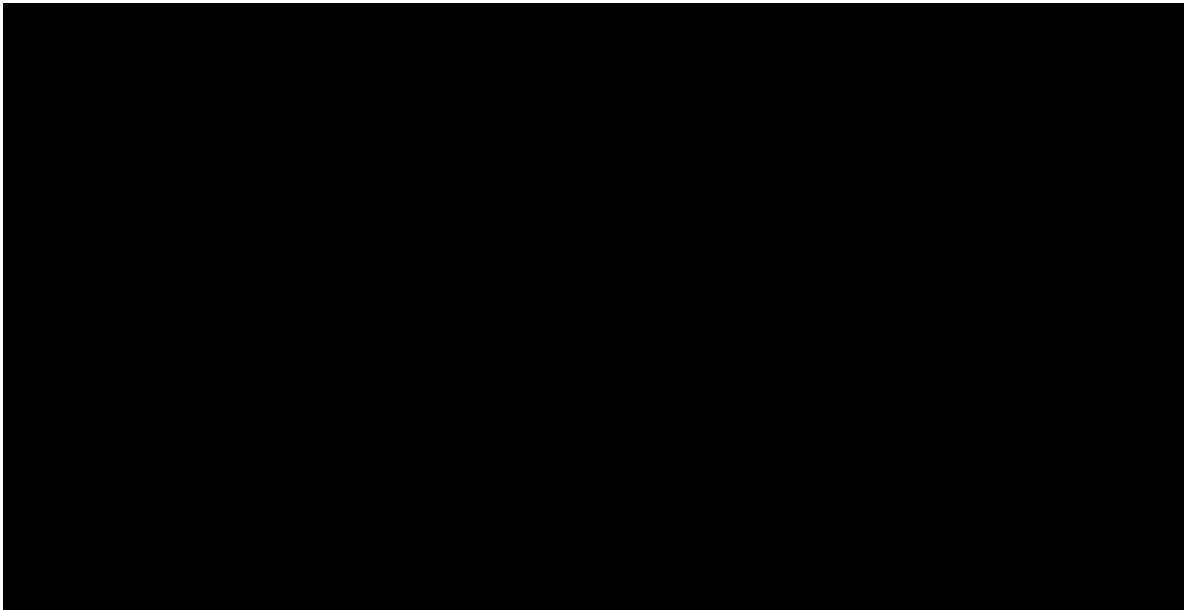
1 Exhibit No. 22, for identification,
2 as of 01/24/2019.)

3 BY MR. ELSNER:

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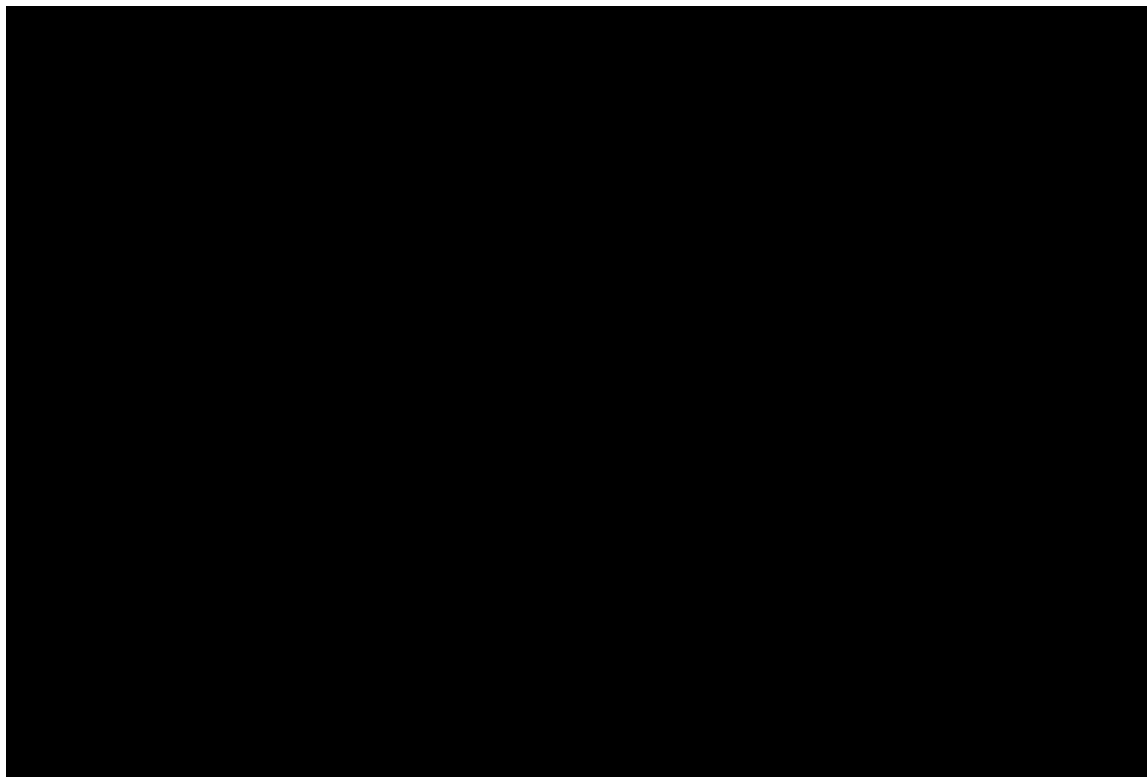
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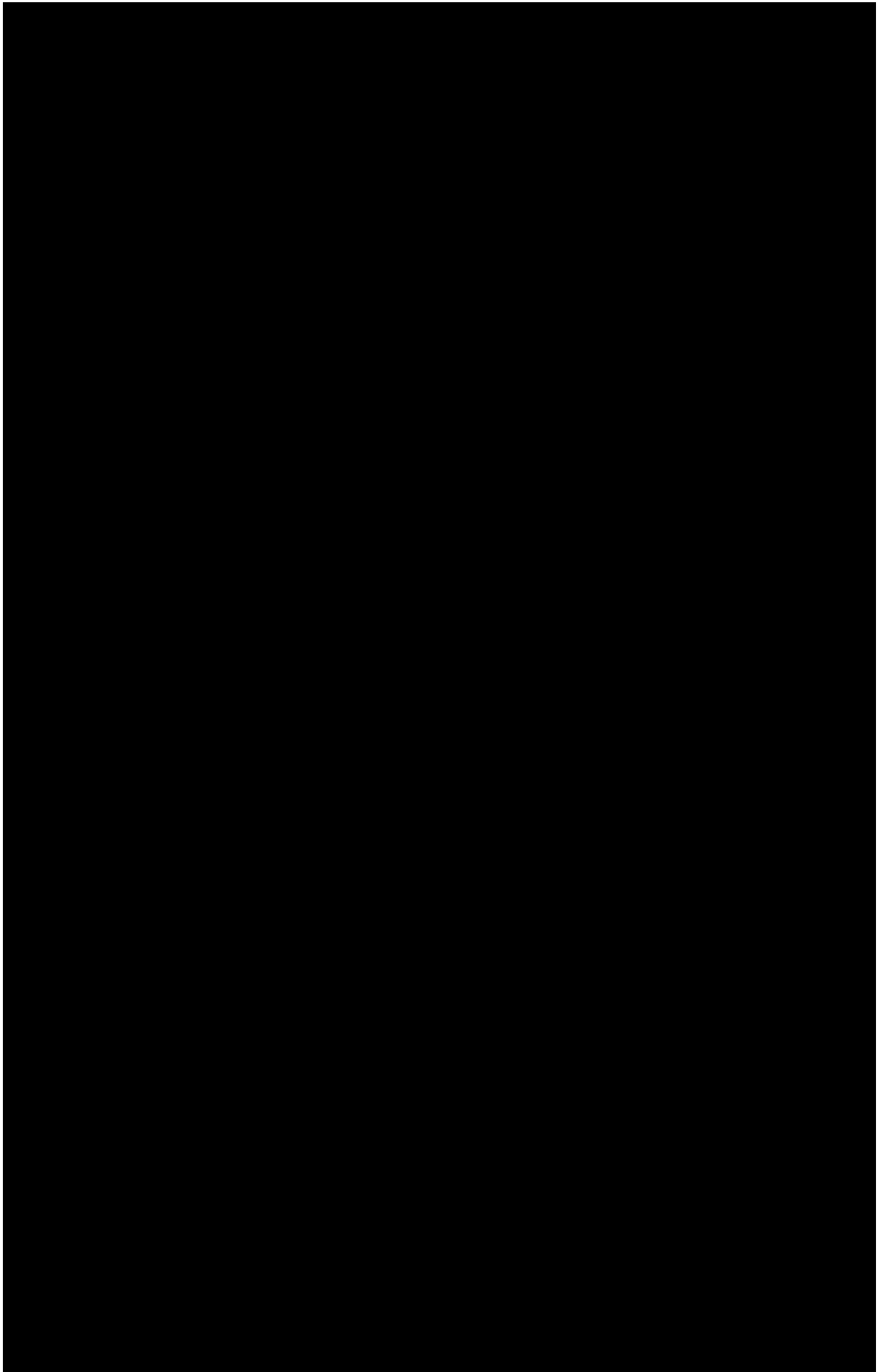
Q. Well, let me show you Exhibit 23.

(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 23, for identification,
as of 01/24/2019.)

BY THE WITNESS:



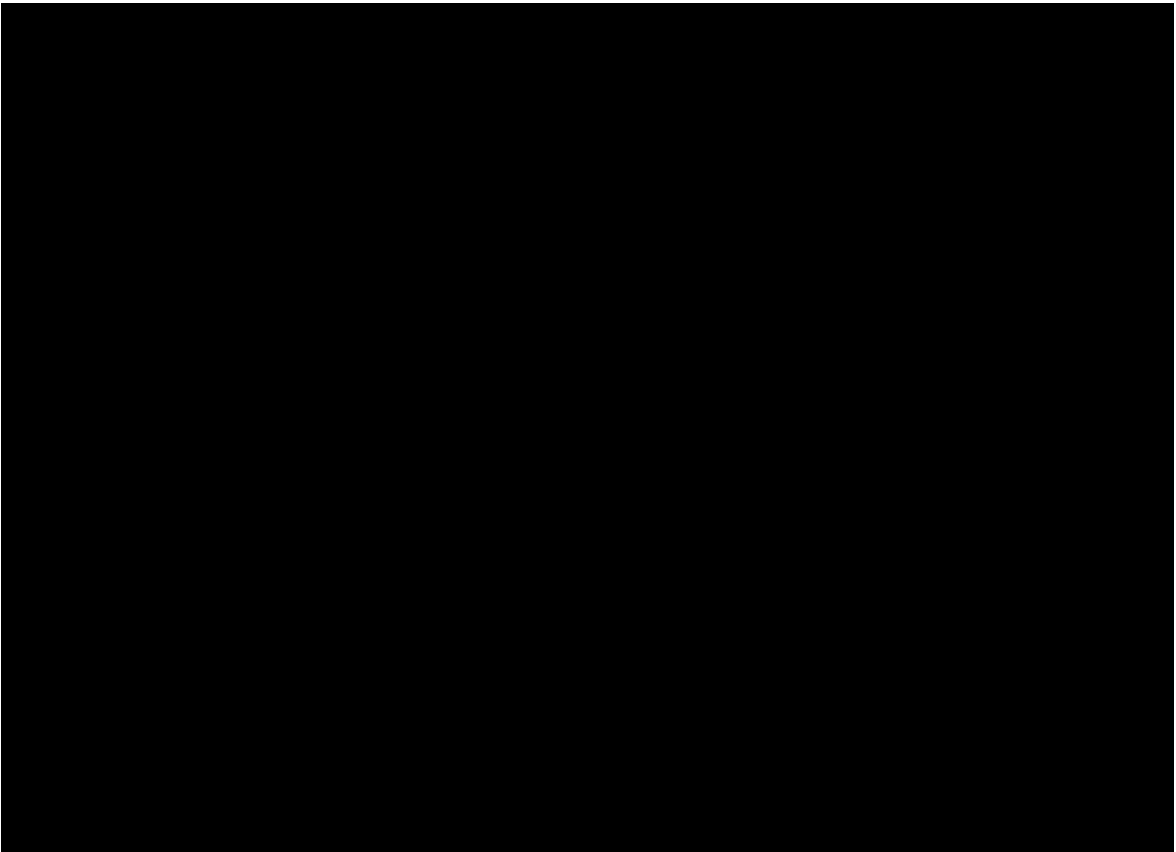
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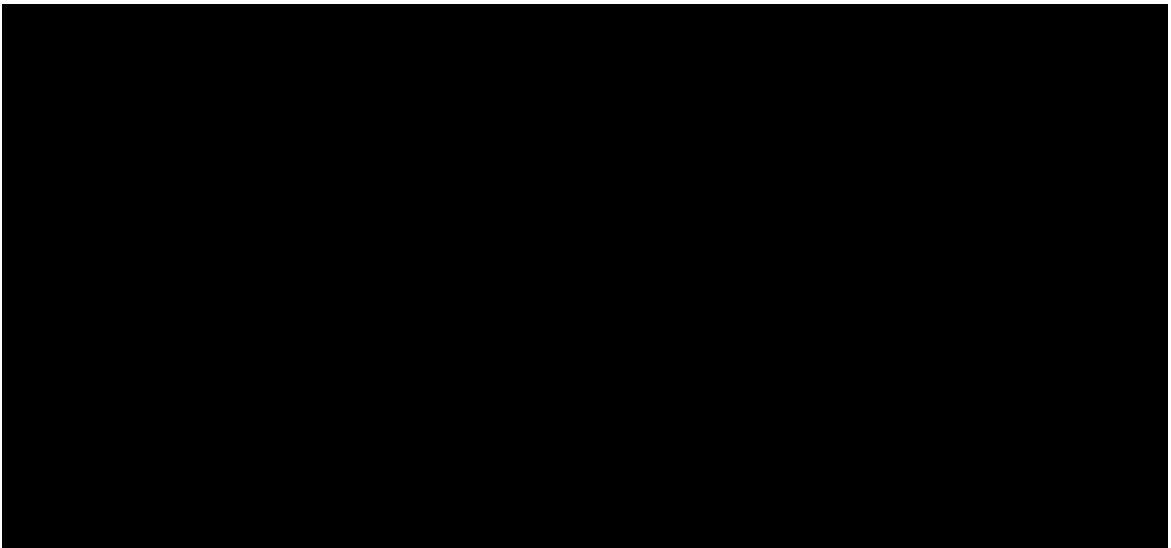
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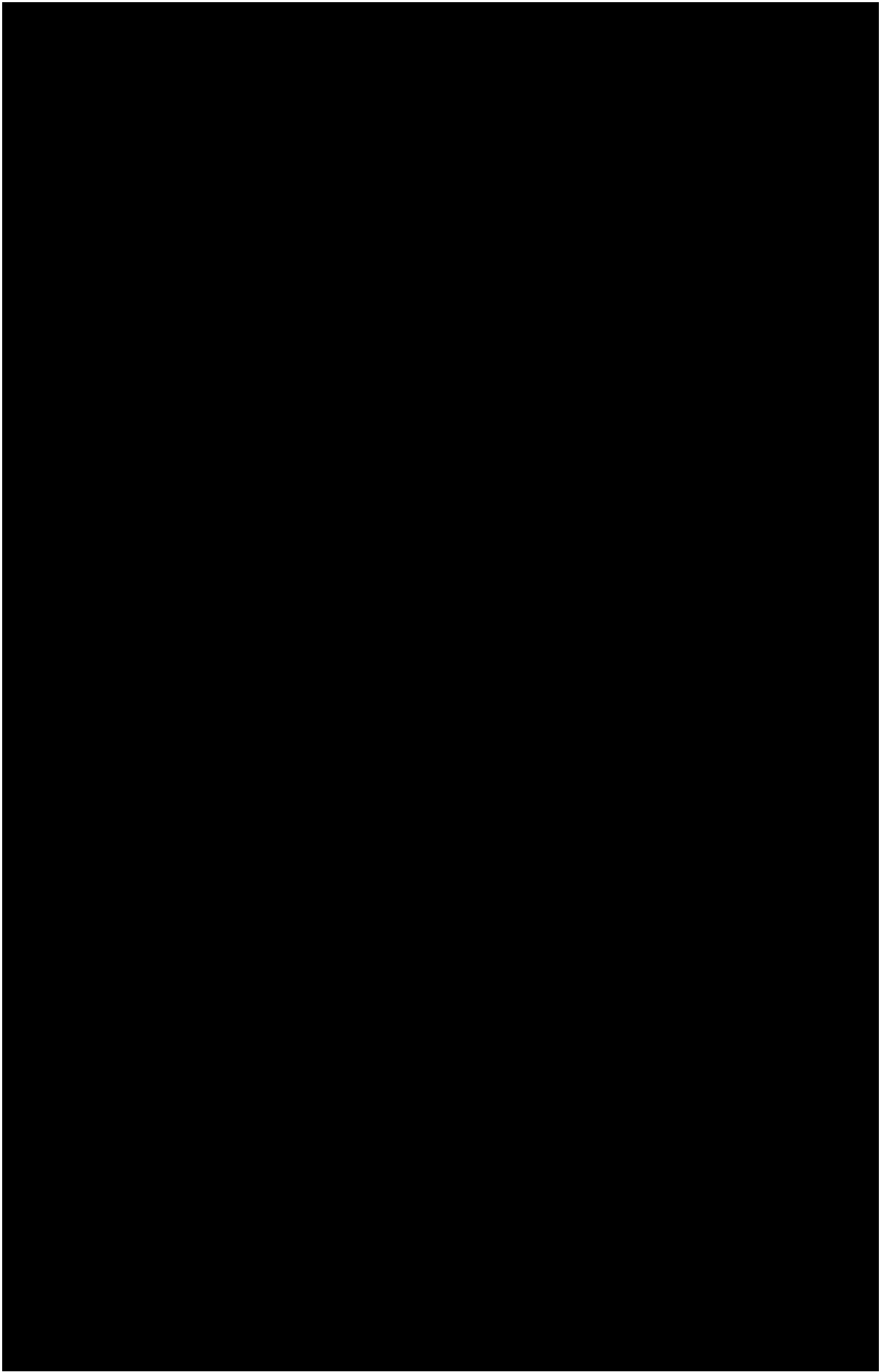
Q. Because I'll show you Exhibit 24.

(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 24, for identification,
as of 01/24/2019.)

BY MR. ELSNER:



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6 A. Yes, and --

7 MR. CLARK: Object to the form.

8 BY THE WITNESS:

9 A. I guess where I'm drawing a blank, do you
10 remember how long after Aaron left did they bring in
11 the consultant that took over as a manager role?

12 BY MR. ELSNER:

13 Q. Well, we may find -- I don't know the
14 answer to that right now, but we may find some
15 documents that helps us answer that.

16 A. Yeah, because I'm want -- I'm wanting to

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20 Q. Well, I am going to move to strike that.
21 We'll get to the question and --

22 A. Okay.

23 Q. -- and we'll get there.

24 Can we look at 290, please.

1 A. 290?

2 Q. Oh, I'm -- I'm going to show you another
3 exhibit.

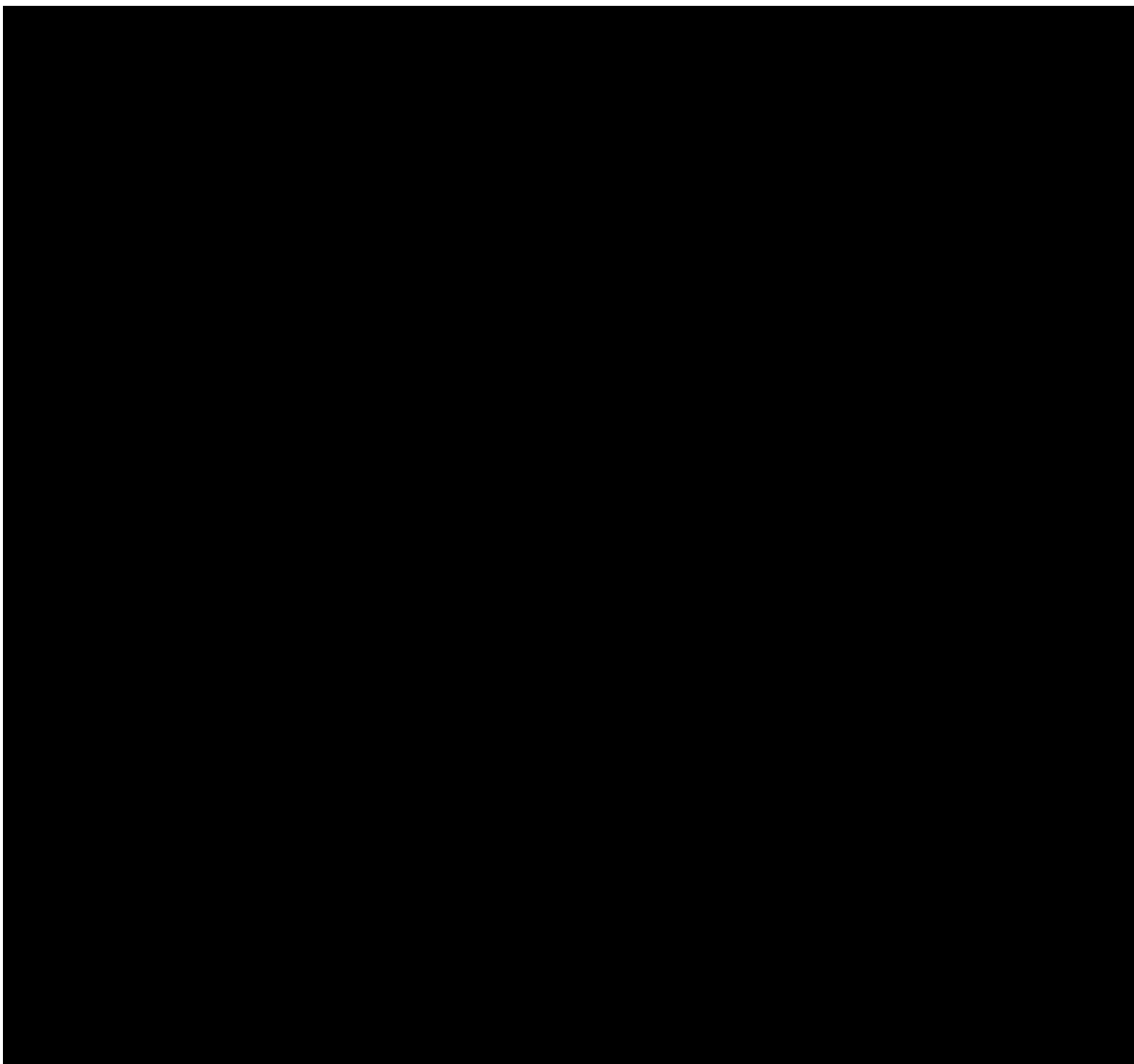
4 A. Oh.

5 Q. We are done with that one.

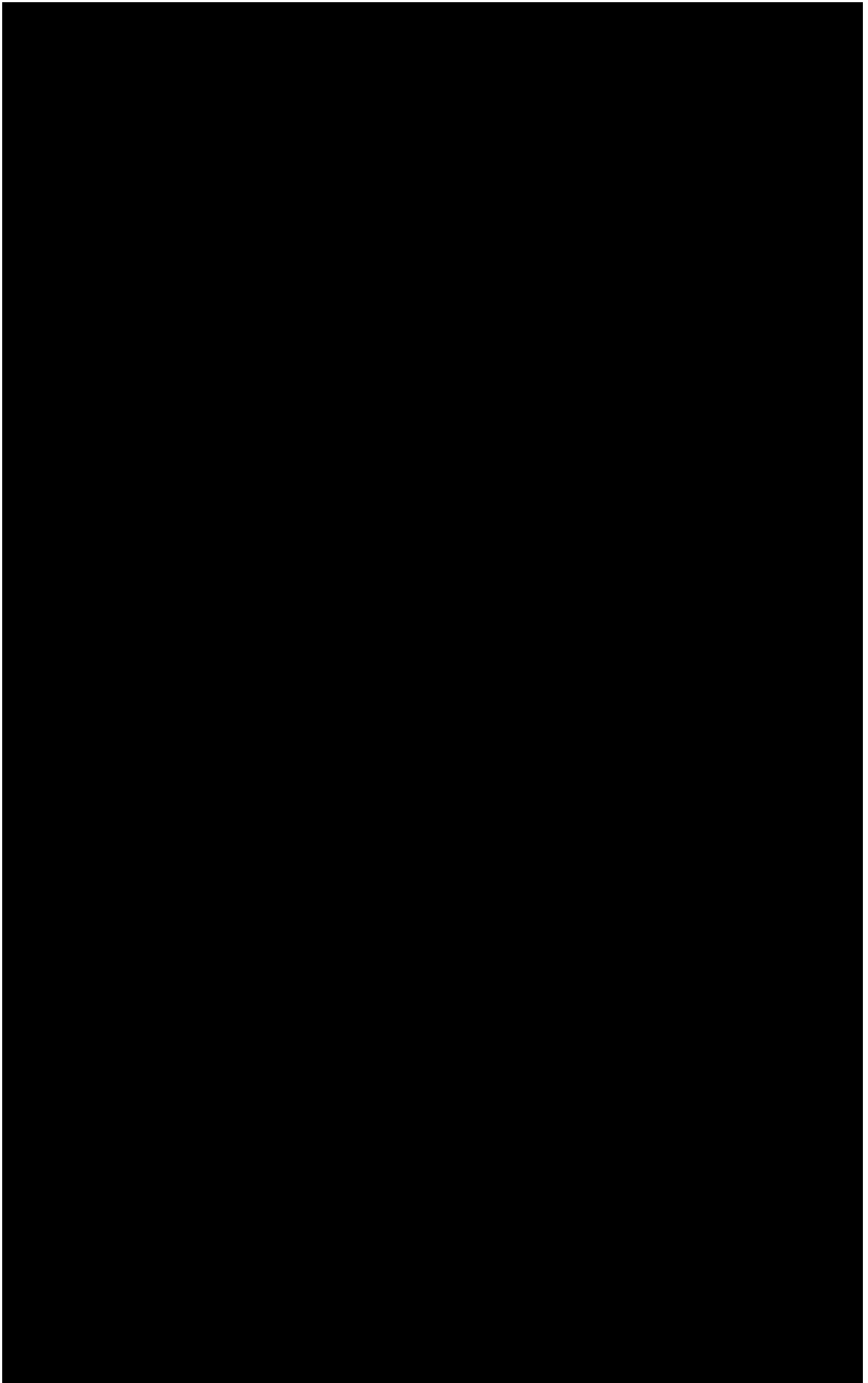
6 (WHEREUPON, a certain document was
7 marked CVS - Elsner Deposition
8 Exhibit No. 25, for identification,
9 as of 01/24/2019.)

10 BY MR. ELSNER:

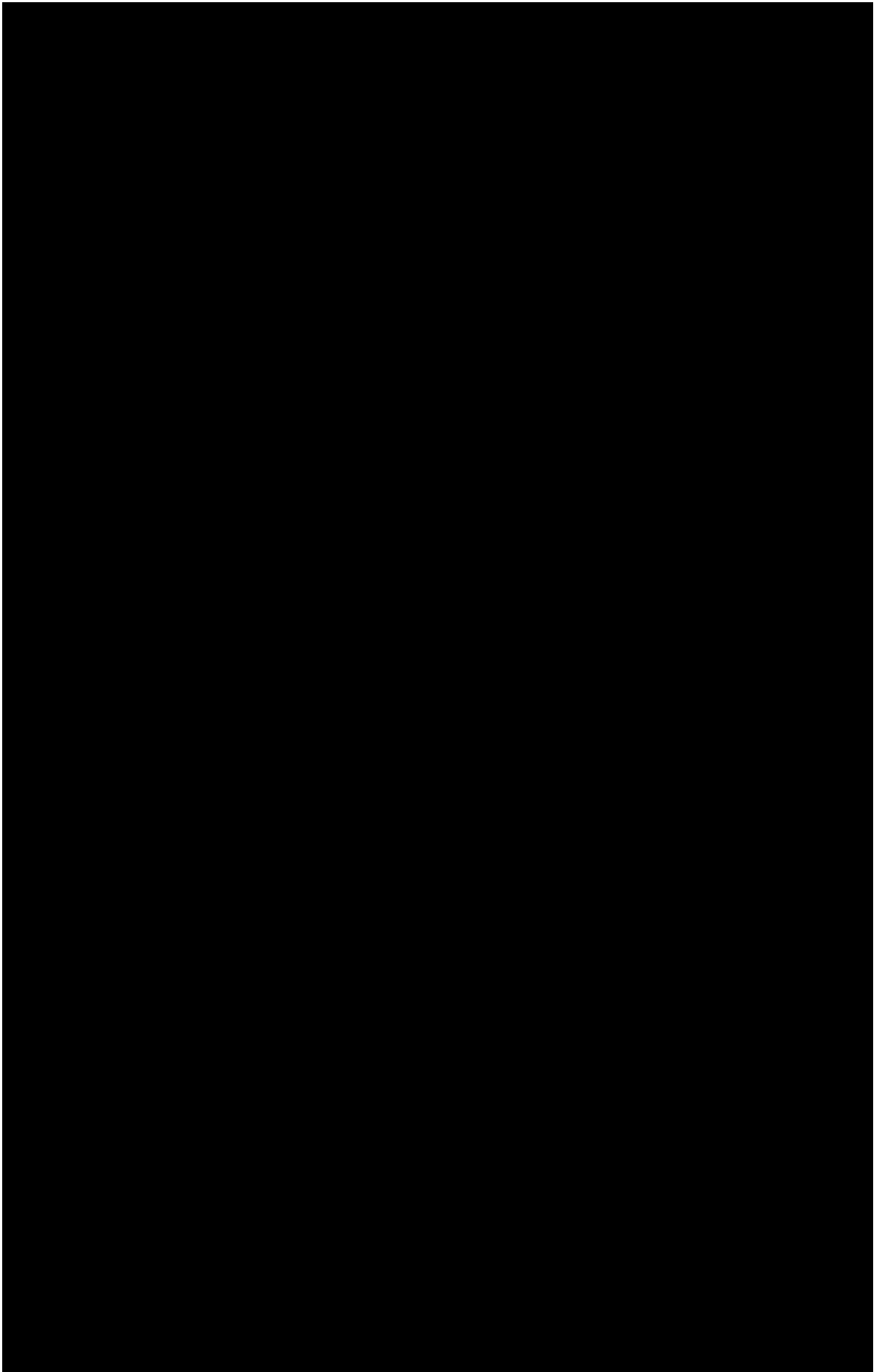
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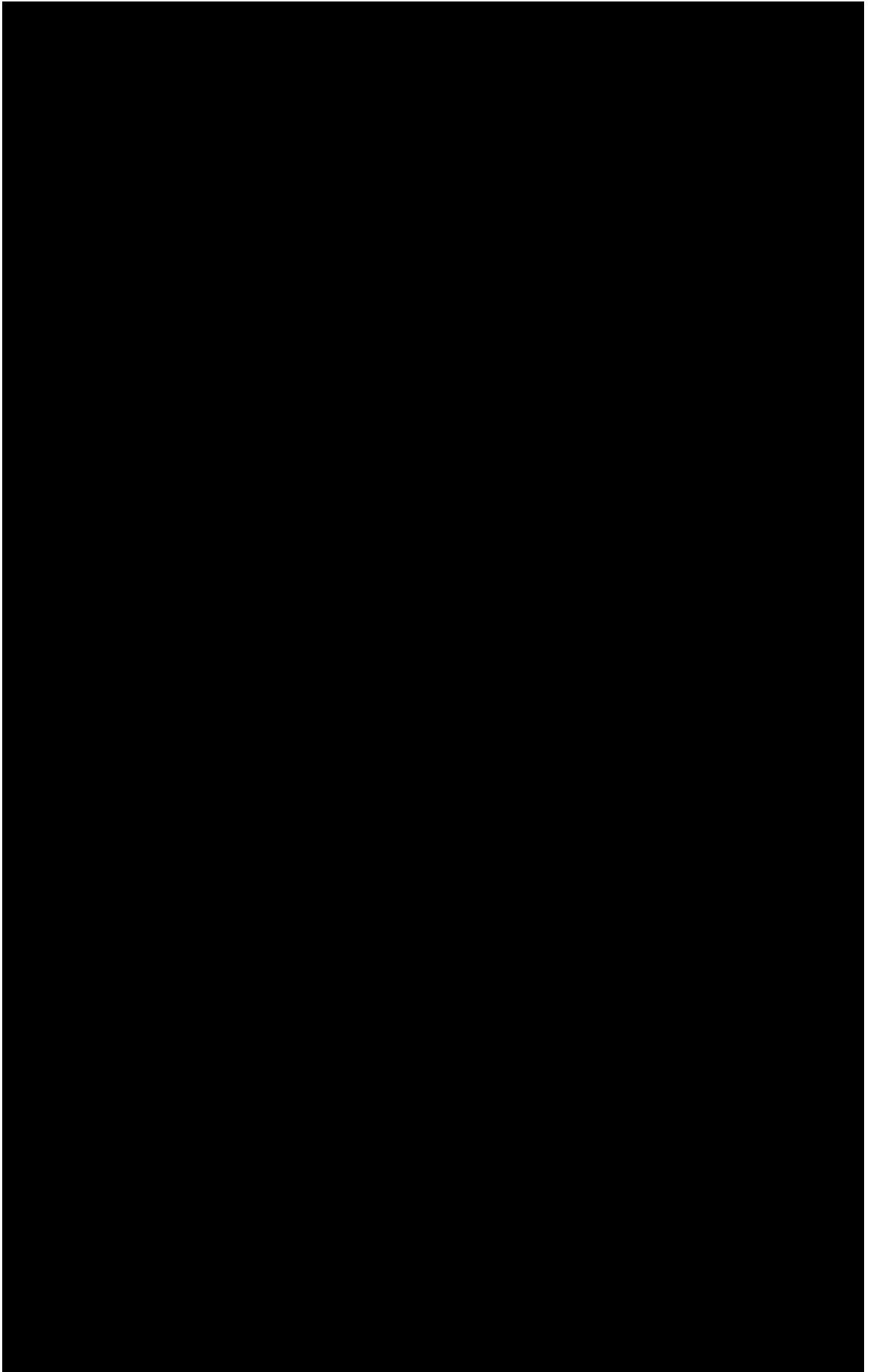
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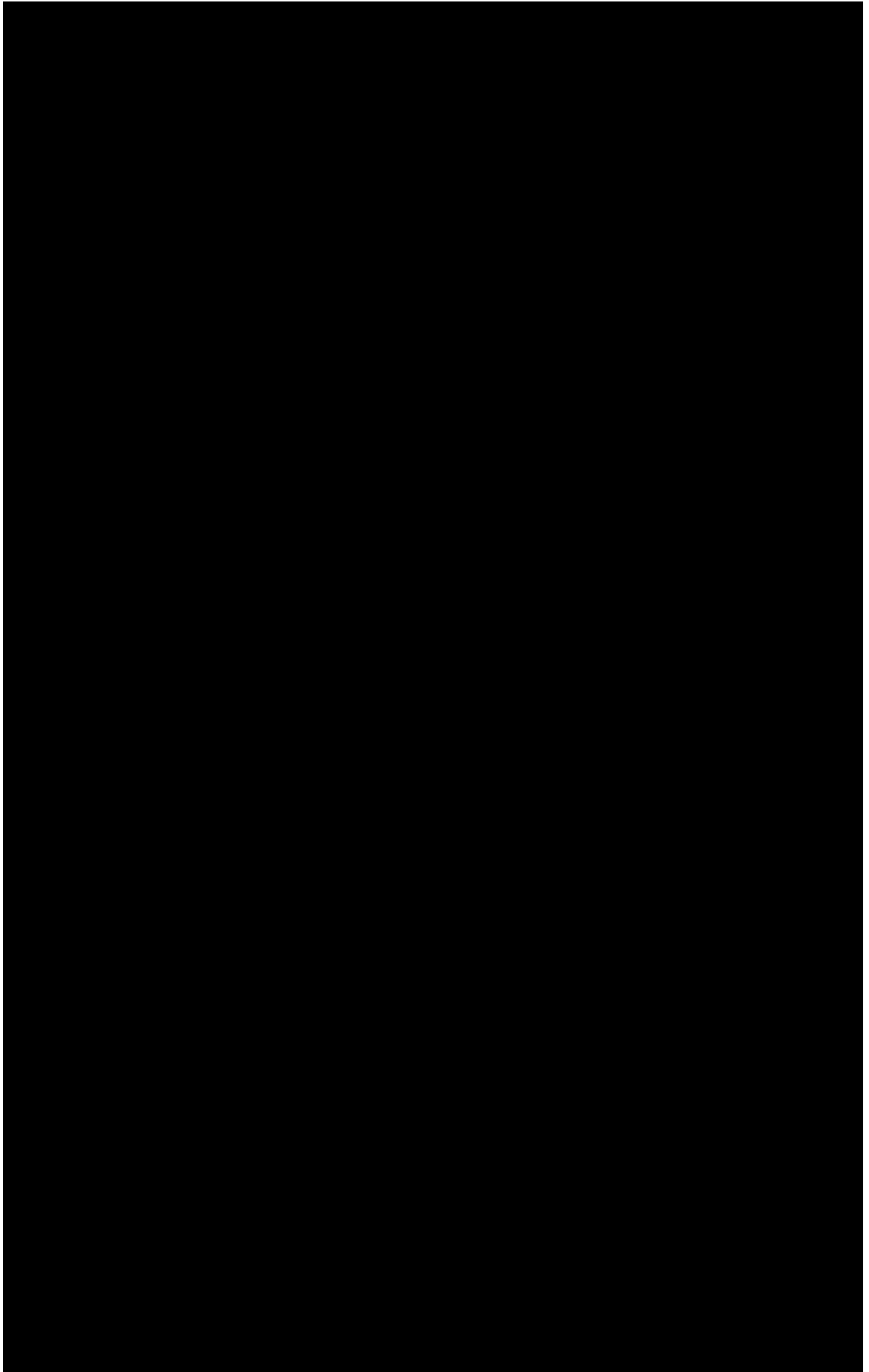
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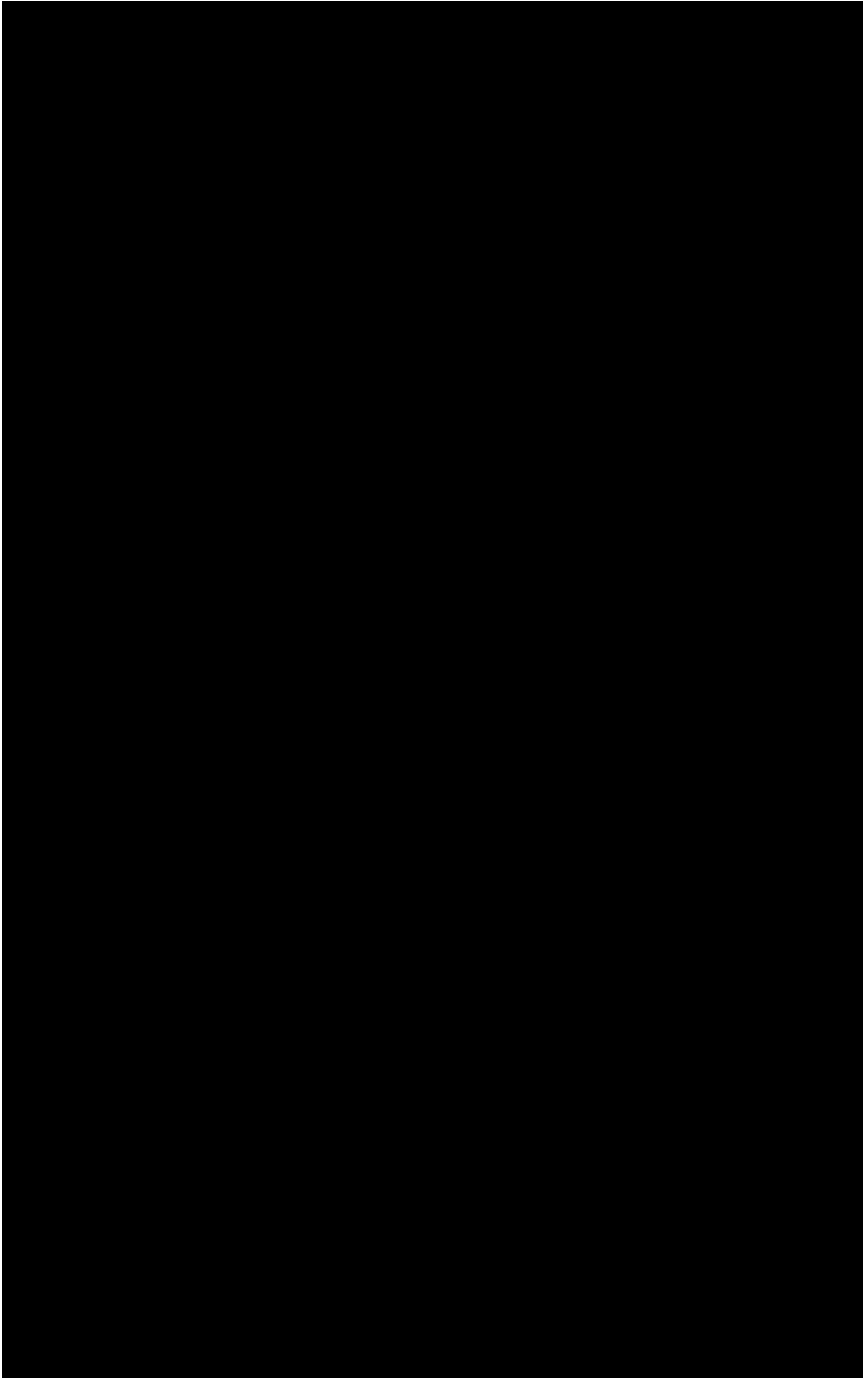
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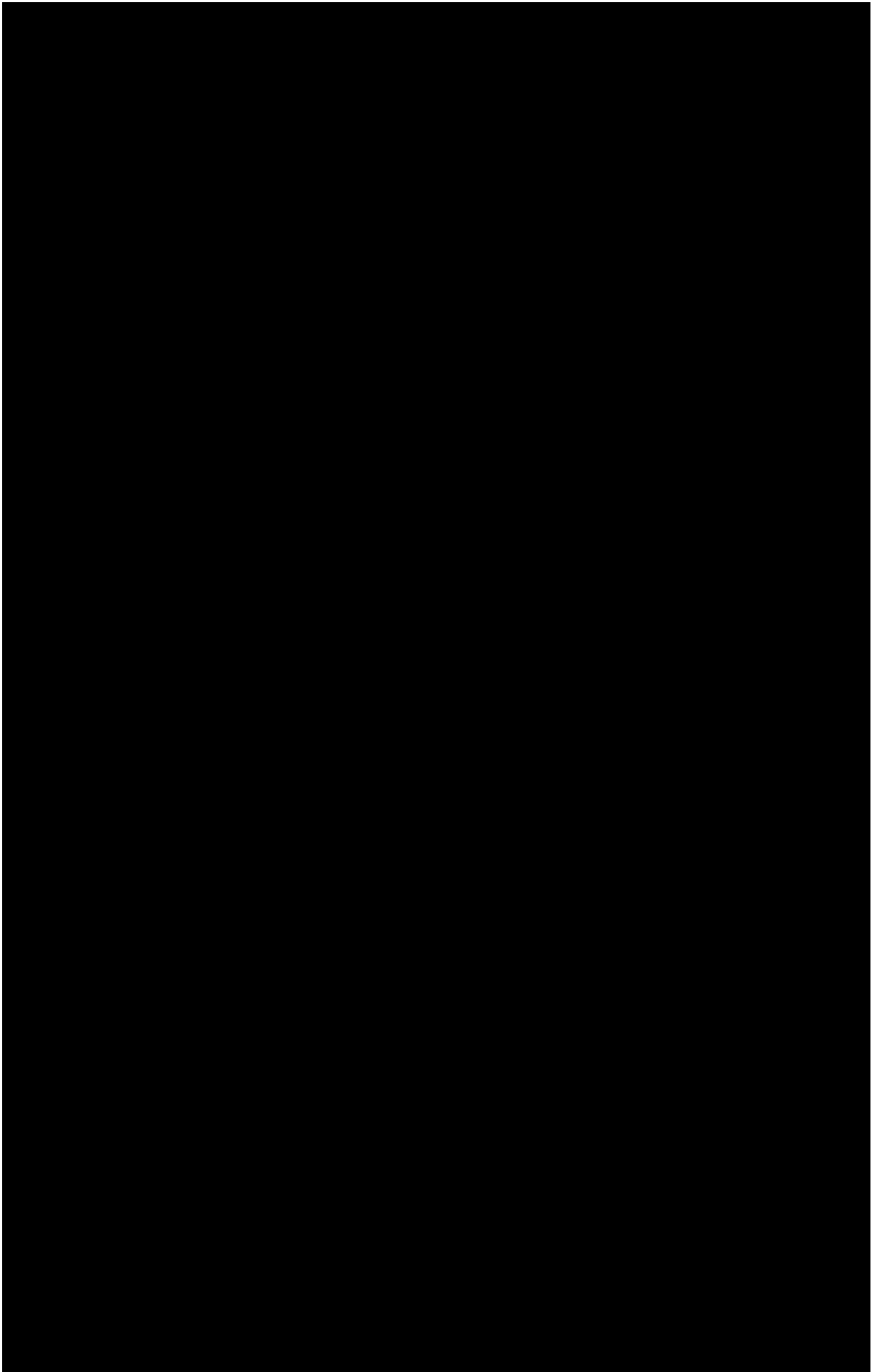
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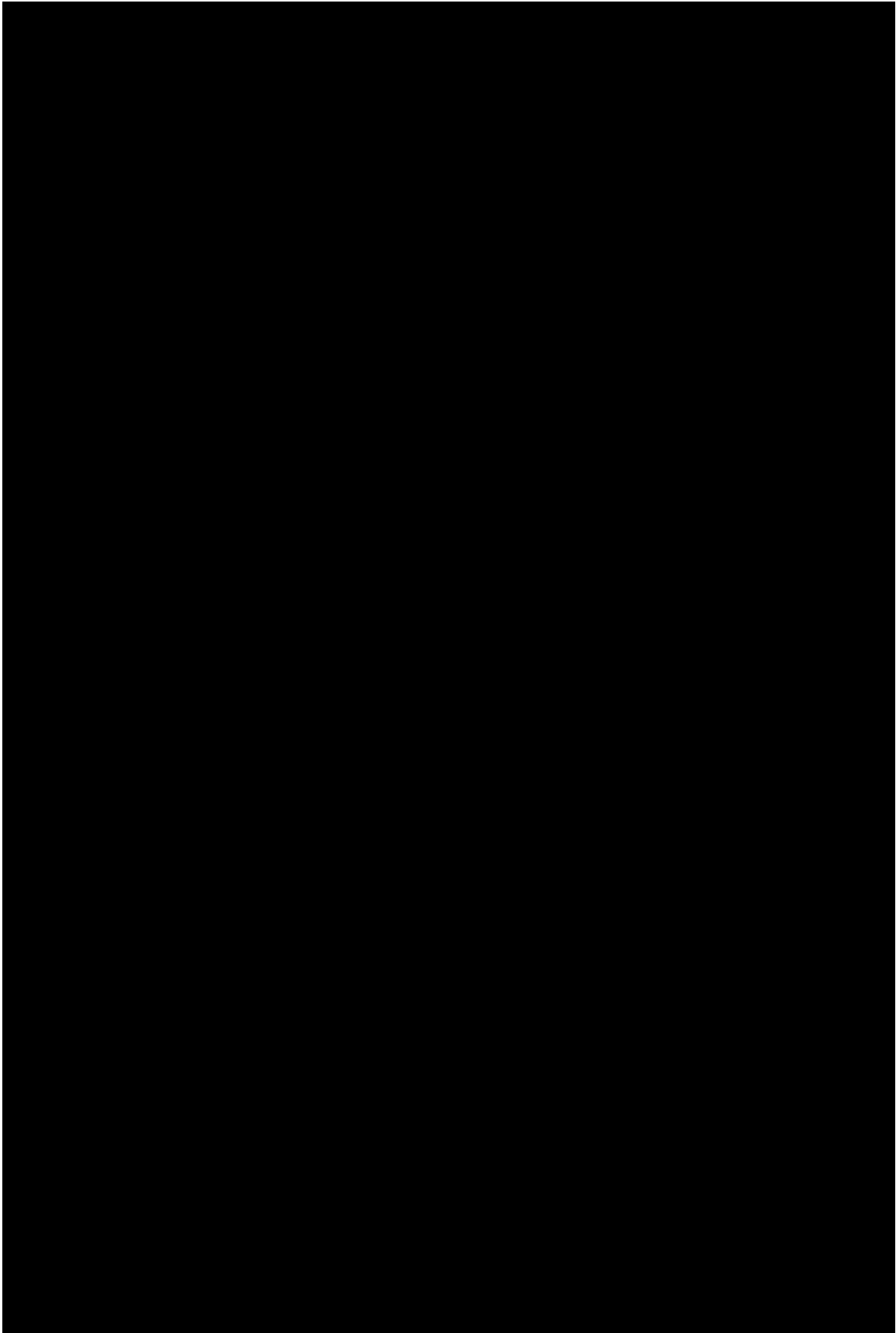
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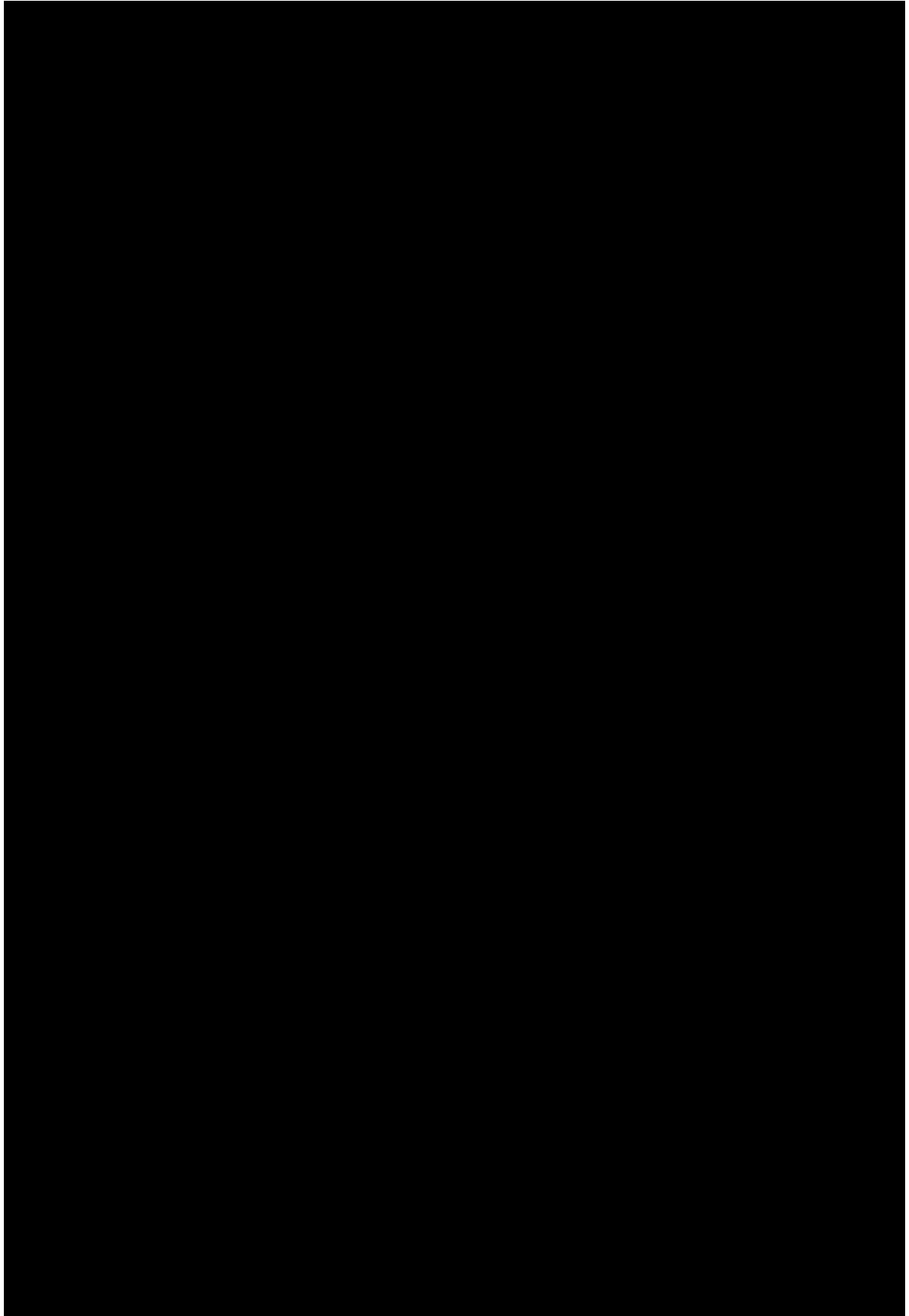
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Do you know who Dean Vanelli is?

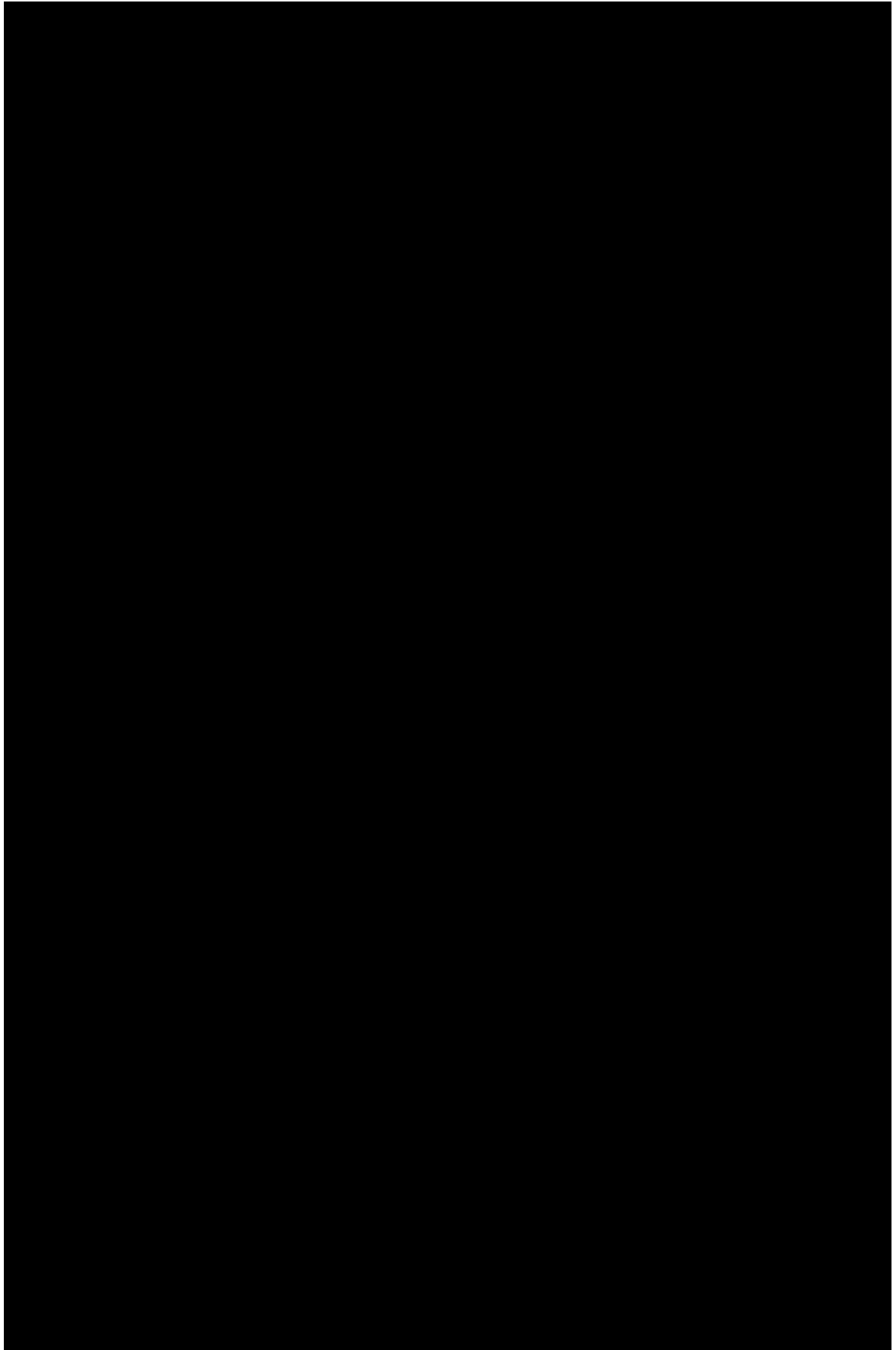
A. Once again, he -- that's another guy that

1 I never met. I -- I recognize the name, I've heard
2 the name, but it was so long ago.

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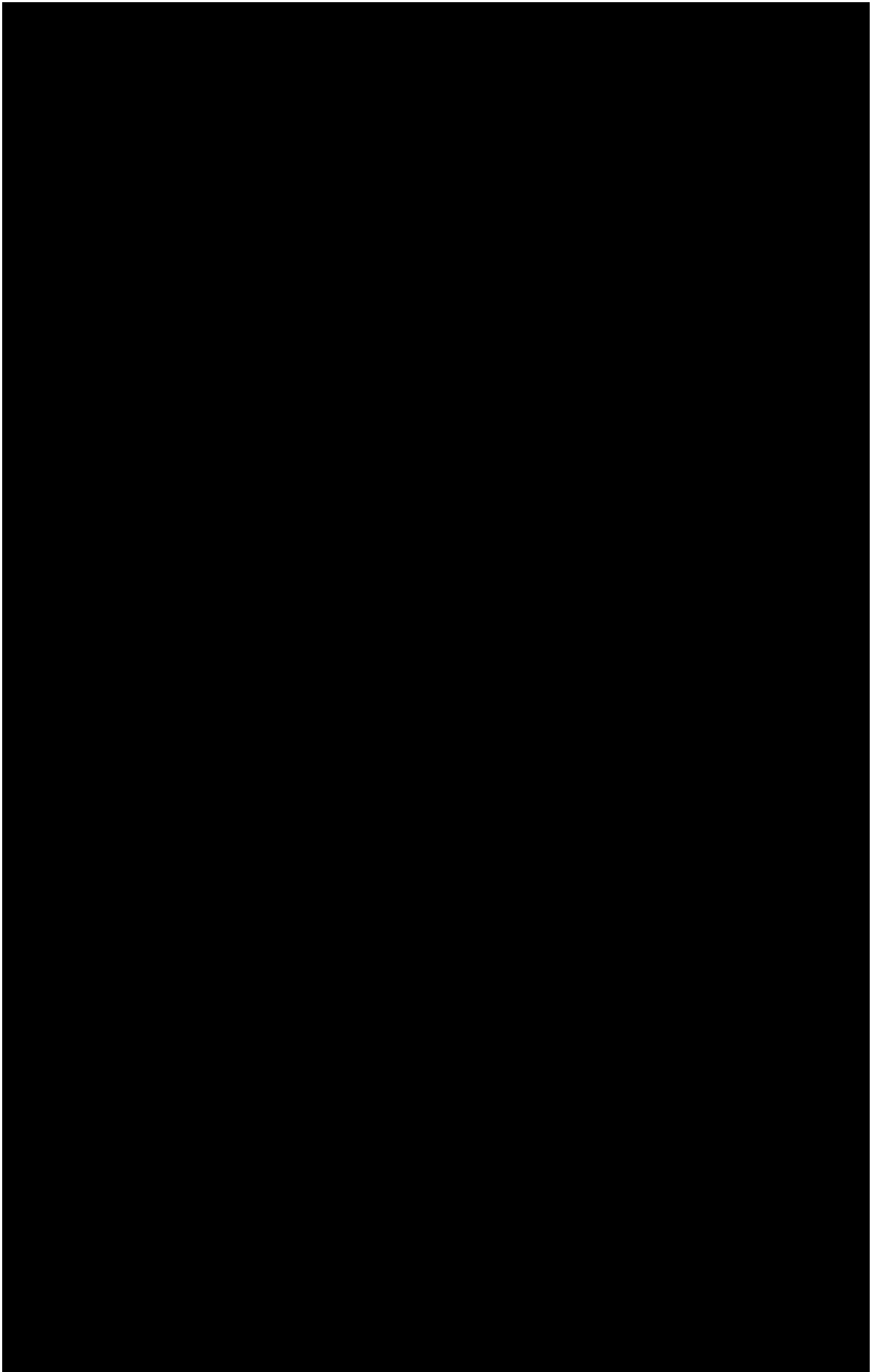
24 MR. ELSNER: If we could look at 291.

1 (WHEREUPON, a certain document was
2 marked CVS - Elsner Deposition
3 Exhibit No. 26, for identification,
4 as of 01/24/2019.)

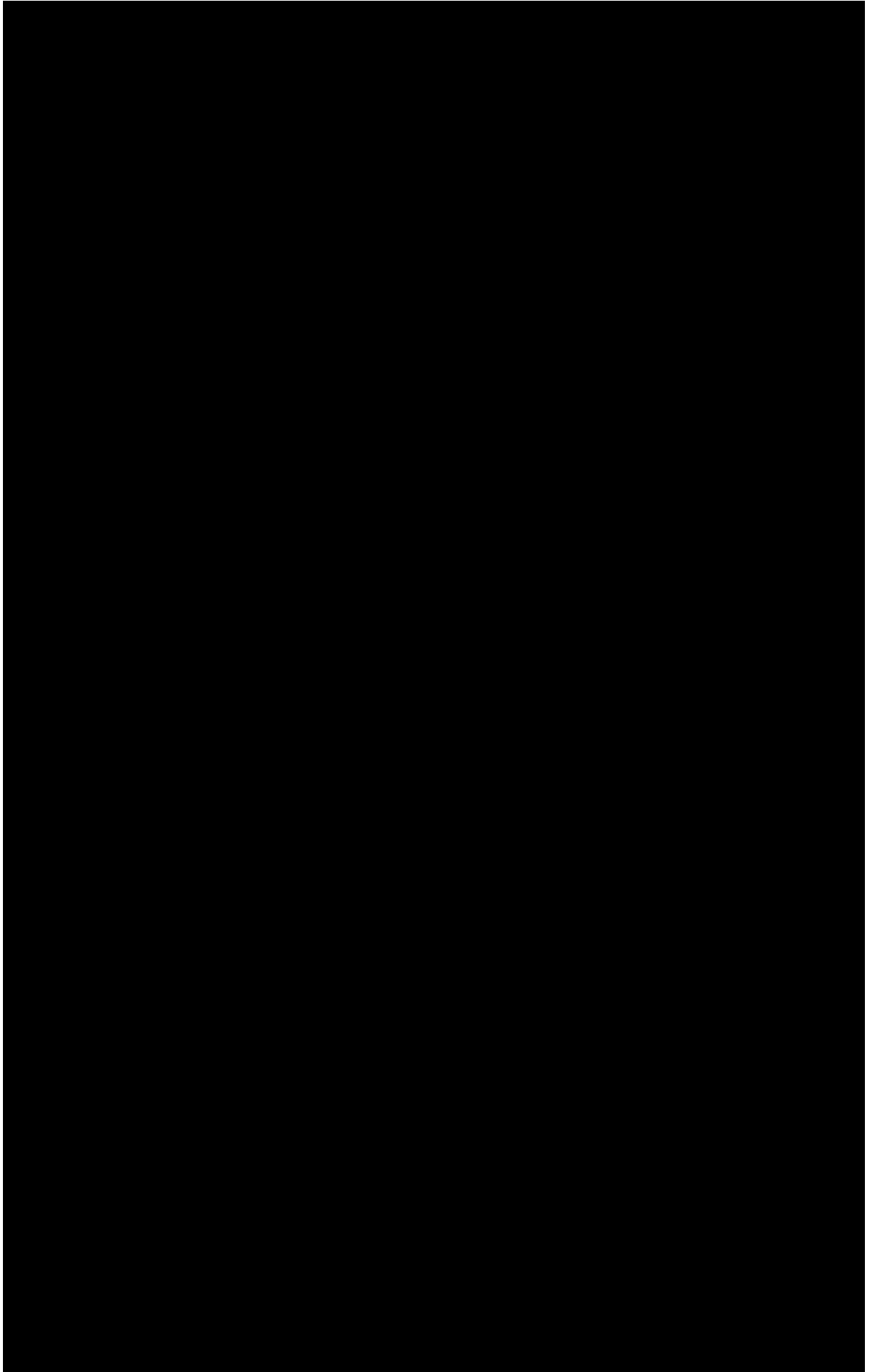
5 BY MR. ELSNER:

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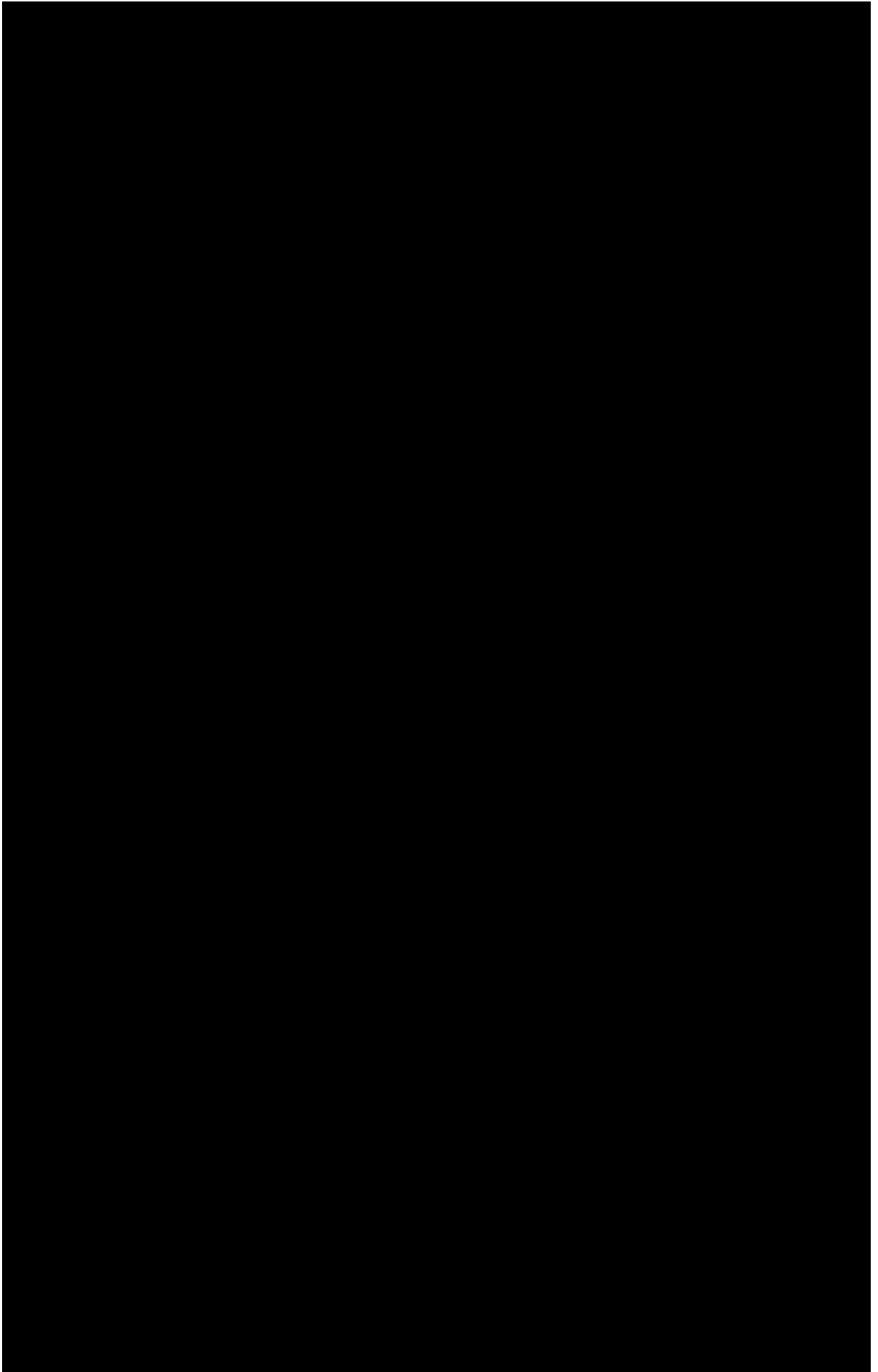
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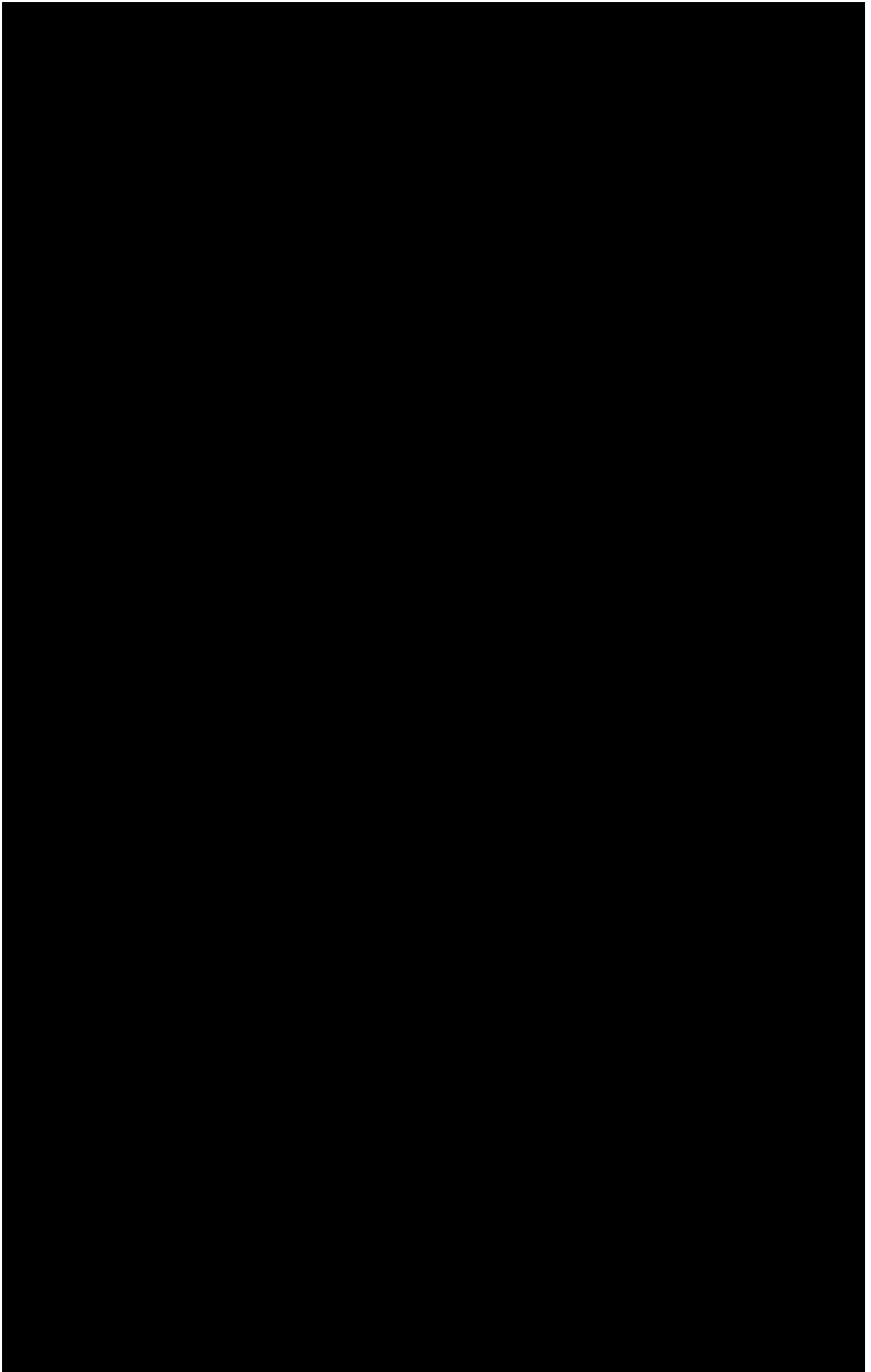
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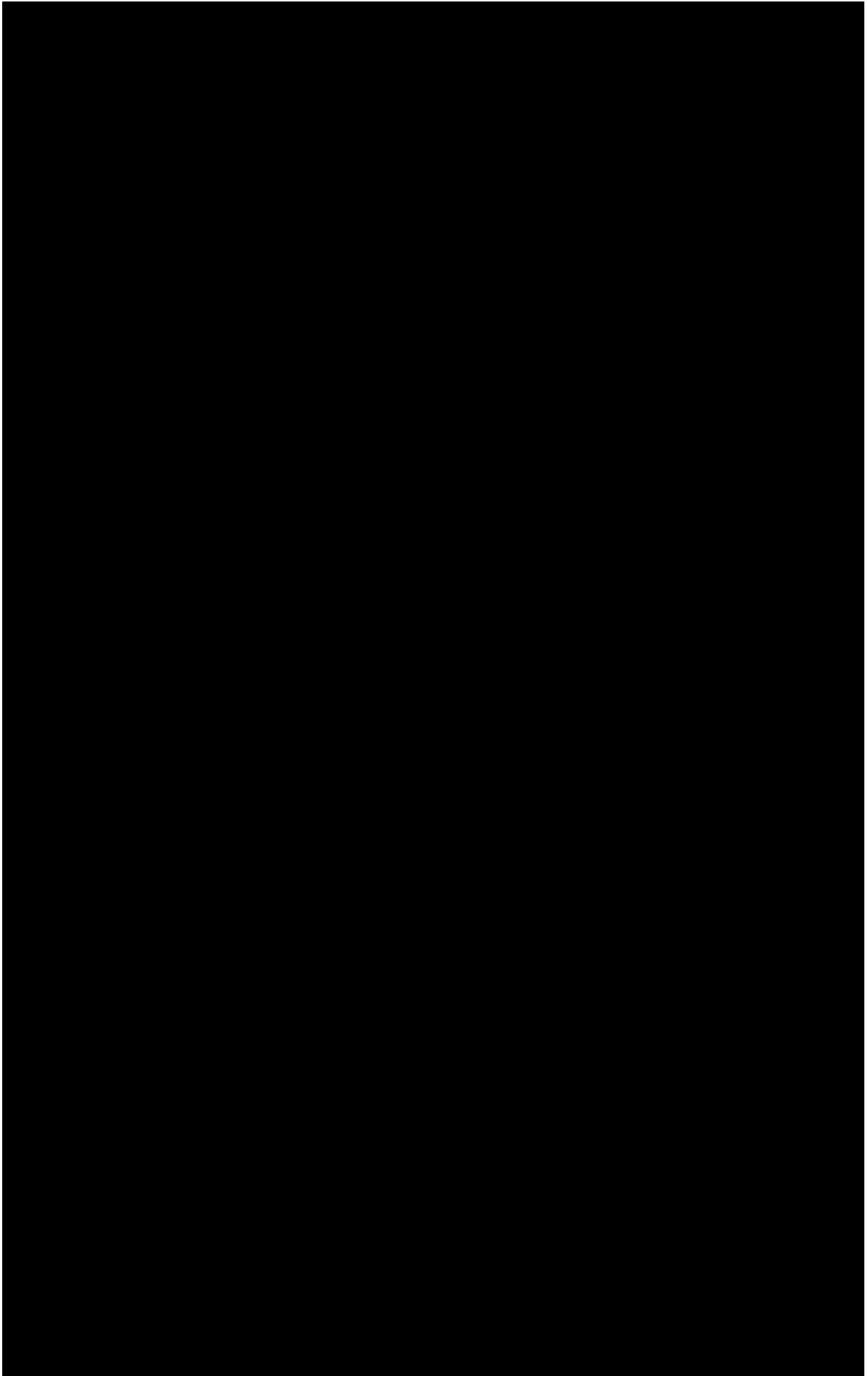
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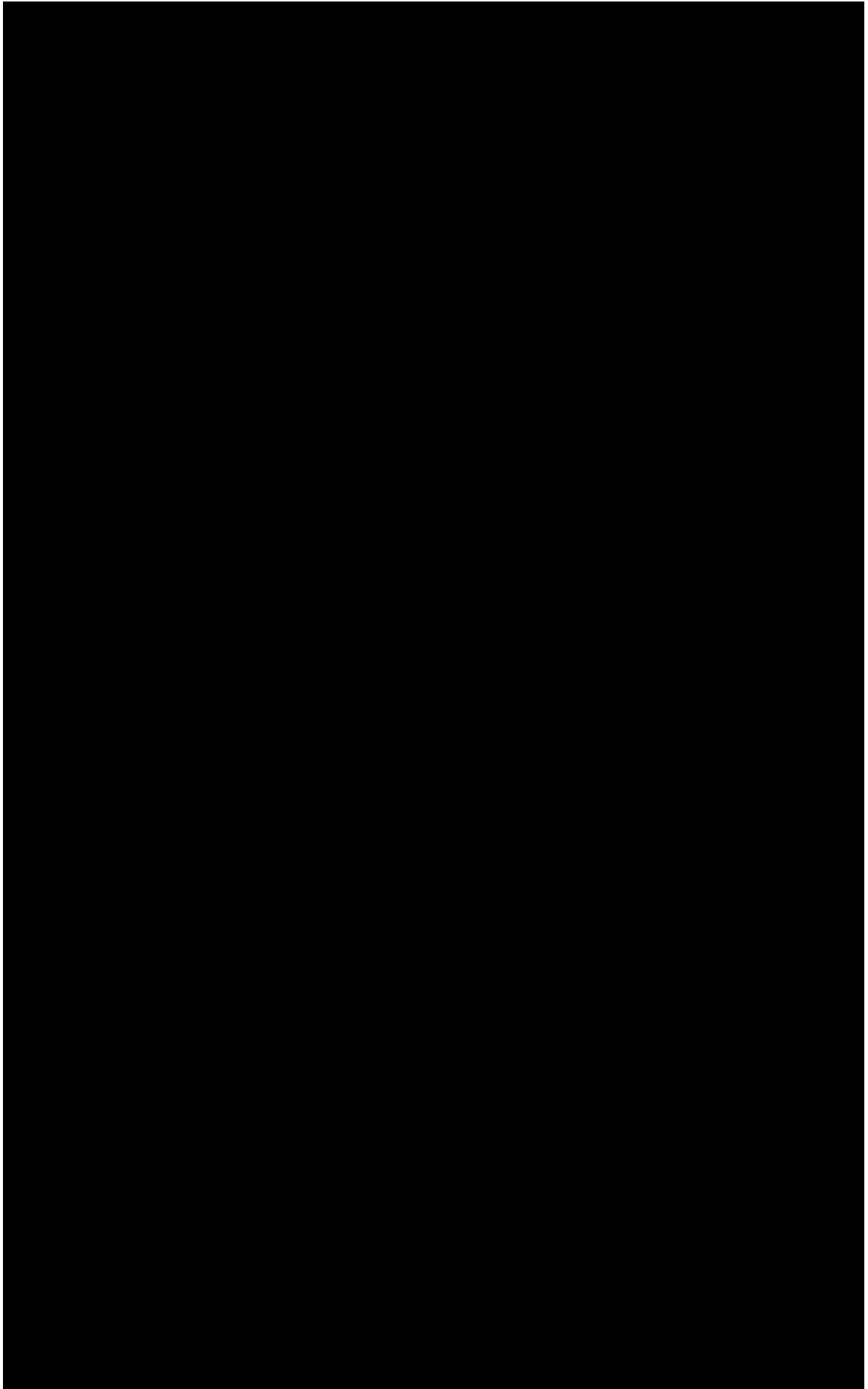
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16 MR. ELSNER: Can we go off the record for a
17 quick, just a minute.

18 MR. CLARK: Yeah, absolutely.

19 THE VIDEOGRAPHER: We are off the record at
20 1:46 p.m.

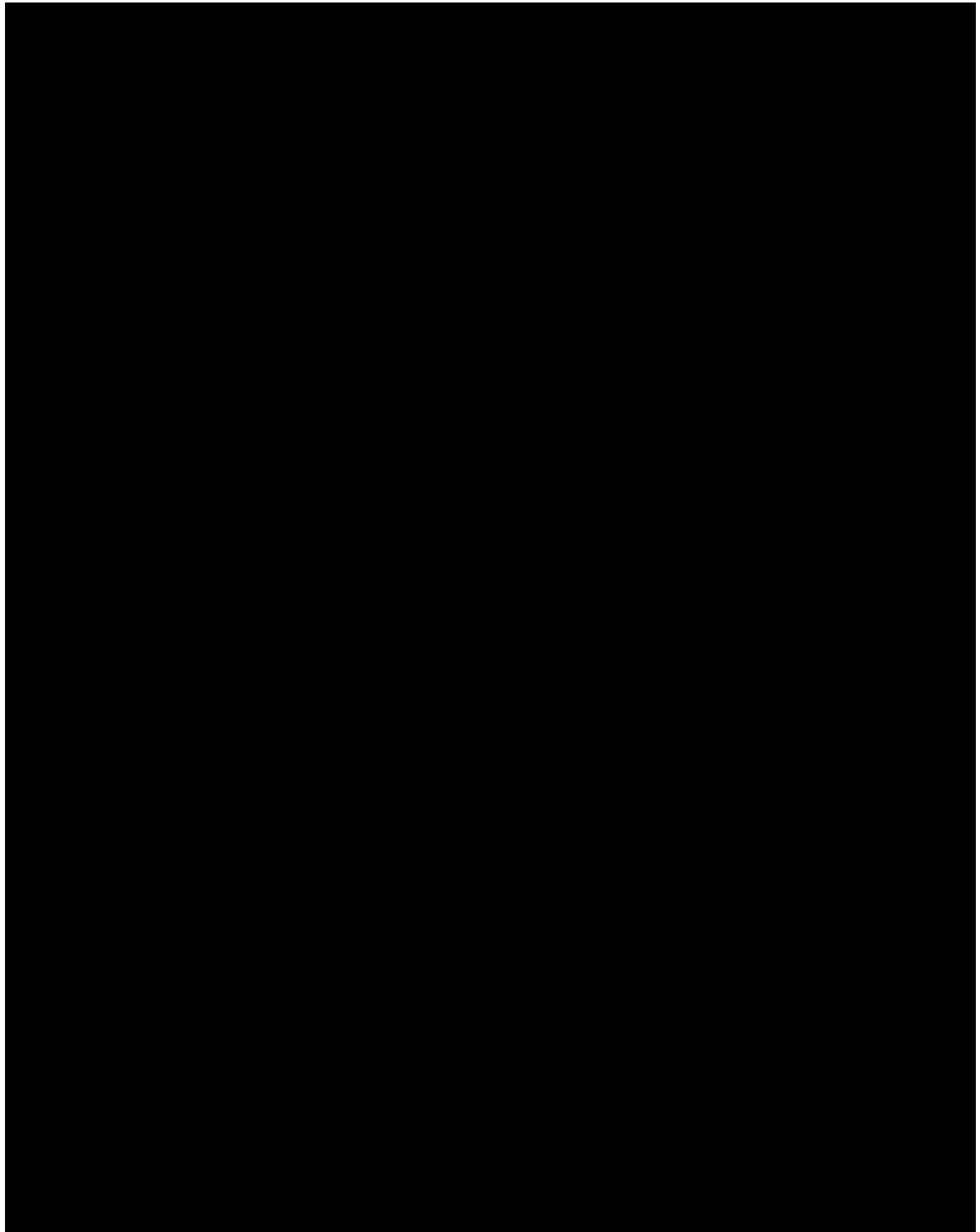
21 (WHEREUPON, a recess was had
22 from 1:46 to 1:50 p.m.)

23 THE VIDEOGRAPHER: We are back on the record at
24 1:50 p.m.

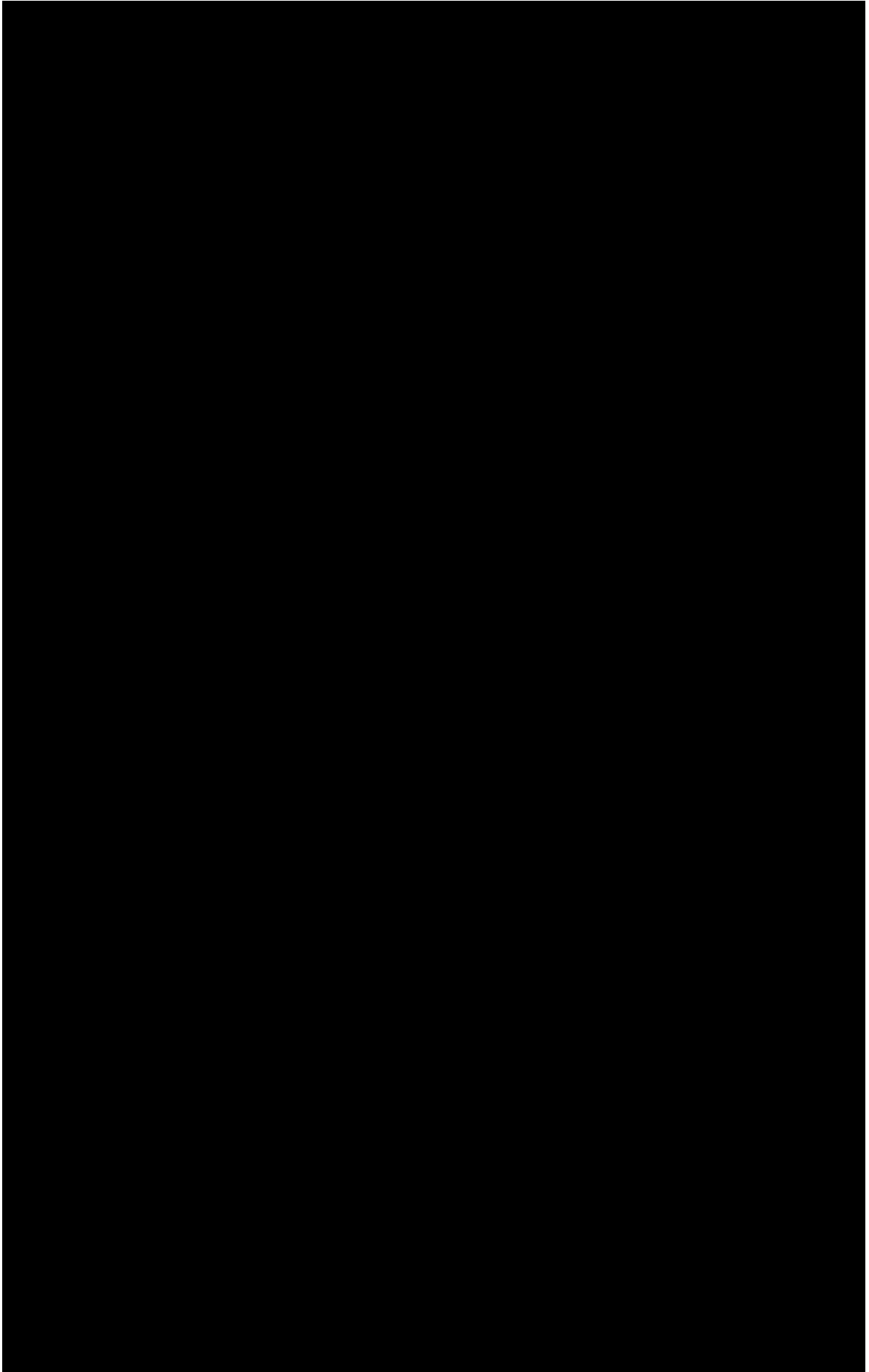
1 (WHEREUPON, a certain document was
2 marked CVS - Elsner Deposition
3 Exhibit No. 27, for identification,
4 as of 01/24/2019.)

5 BY MR. ELSNER:

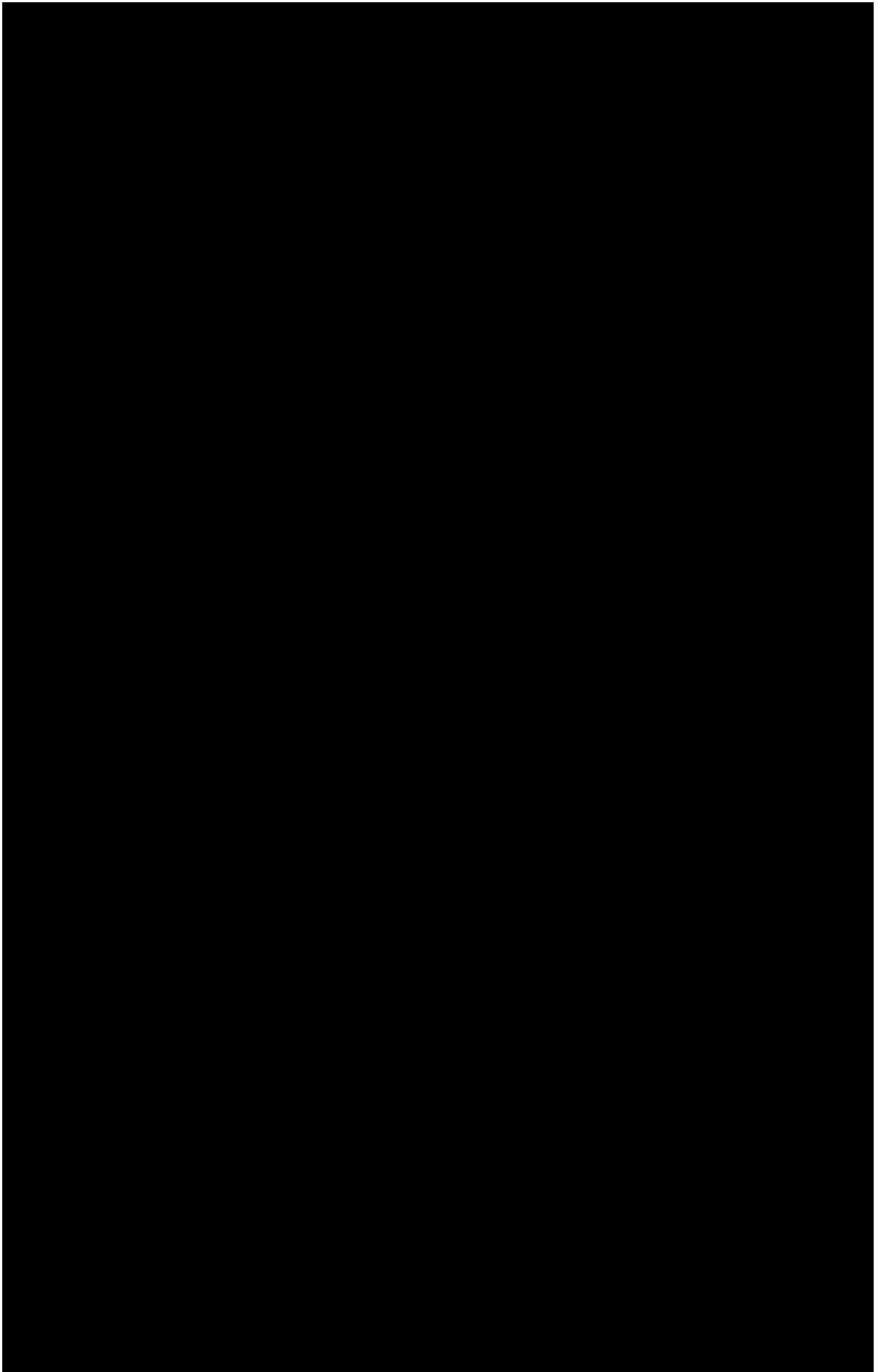
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Q. And he attaches your -- your e-mail below,
correct.

6

Okay. I want to have you take a look at
the next exhibit.

8

MR. ELSNER: No, I don't think so. Hold on a
second. Can I see Exhibit 91.

10

Can we go off the record real quick.

11

THE VIDEOGRAPHER: We are off the record at

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1:54 p.m.

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(WHEREUPON, a recess was had

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from 1:54 to 1:57 p.m.)

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THE VIDEOGRAPHER: We are back on the record at

16

1:57 p.m.

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BY MR. ELSNER:

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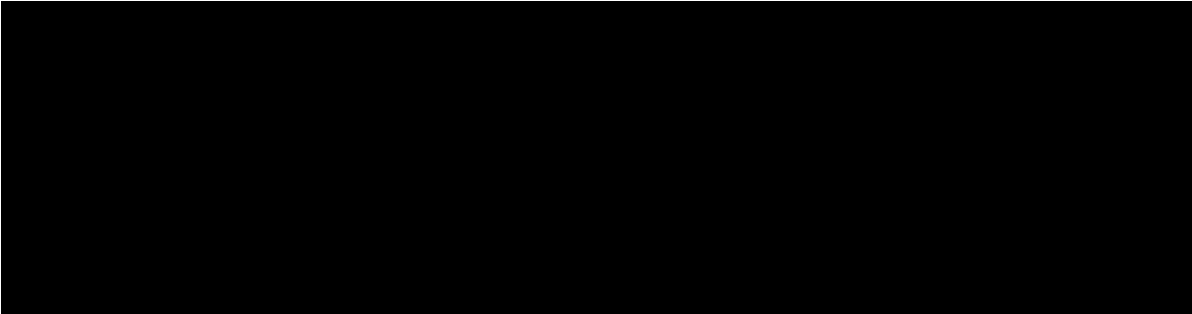
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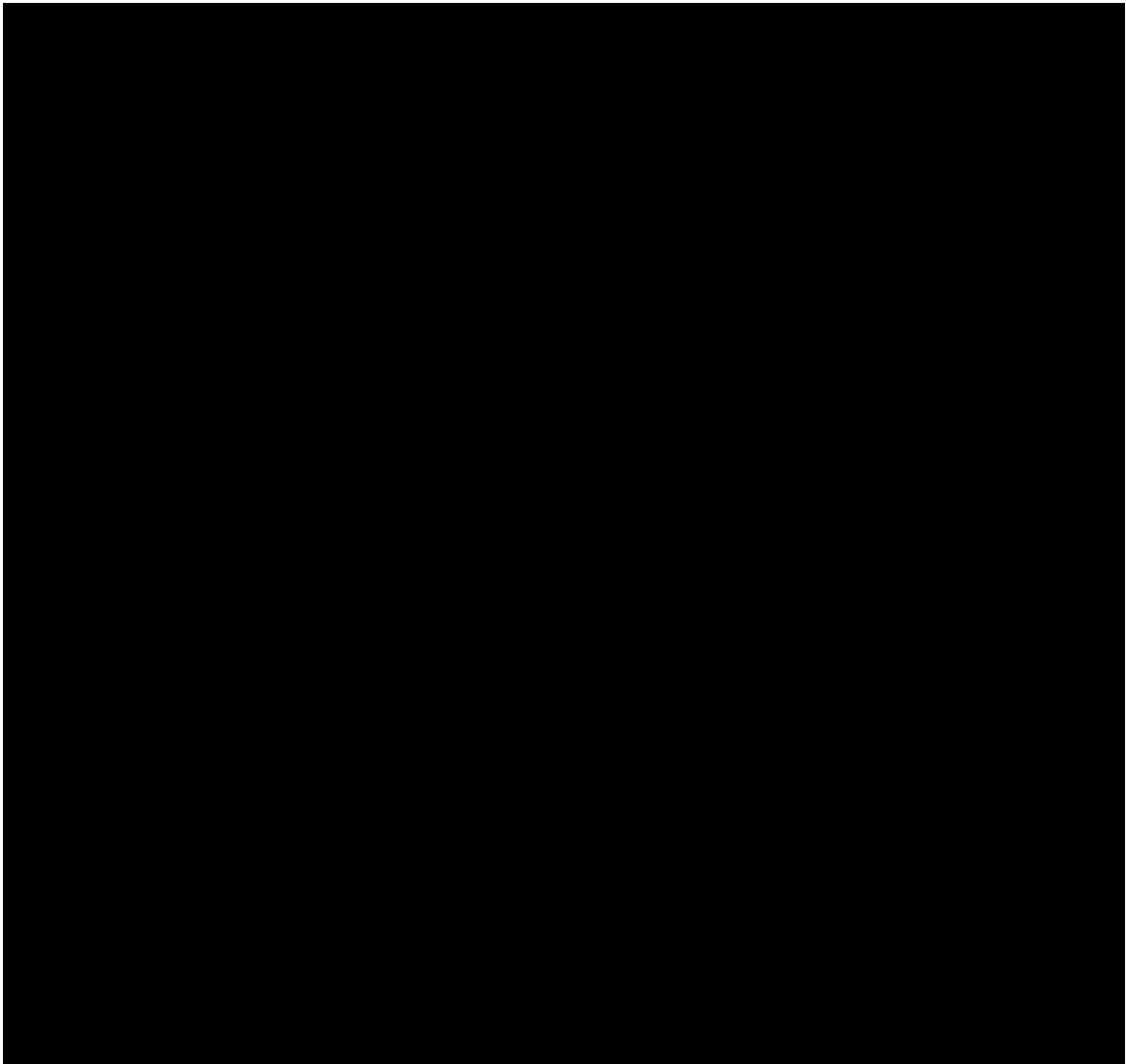
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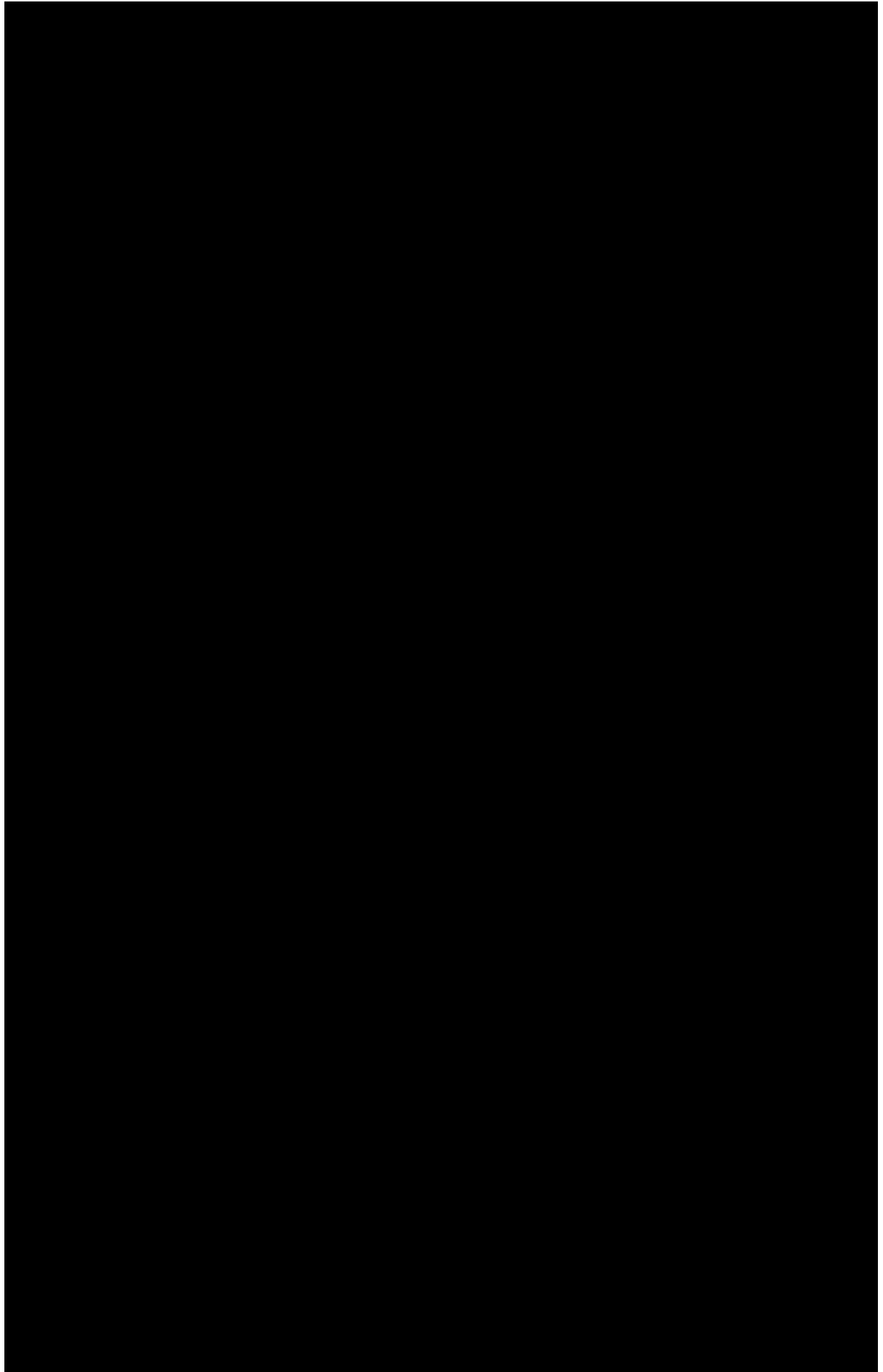
Q. Potential risks.

(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 28, for identification,
as of 01/24/2019.)

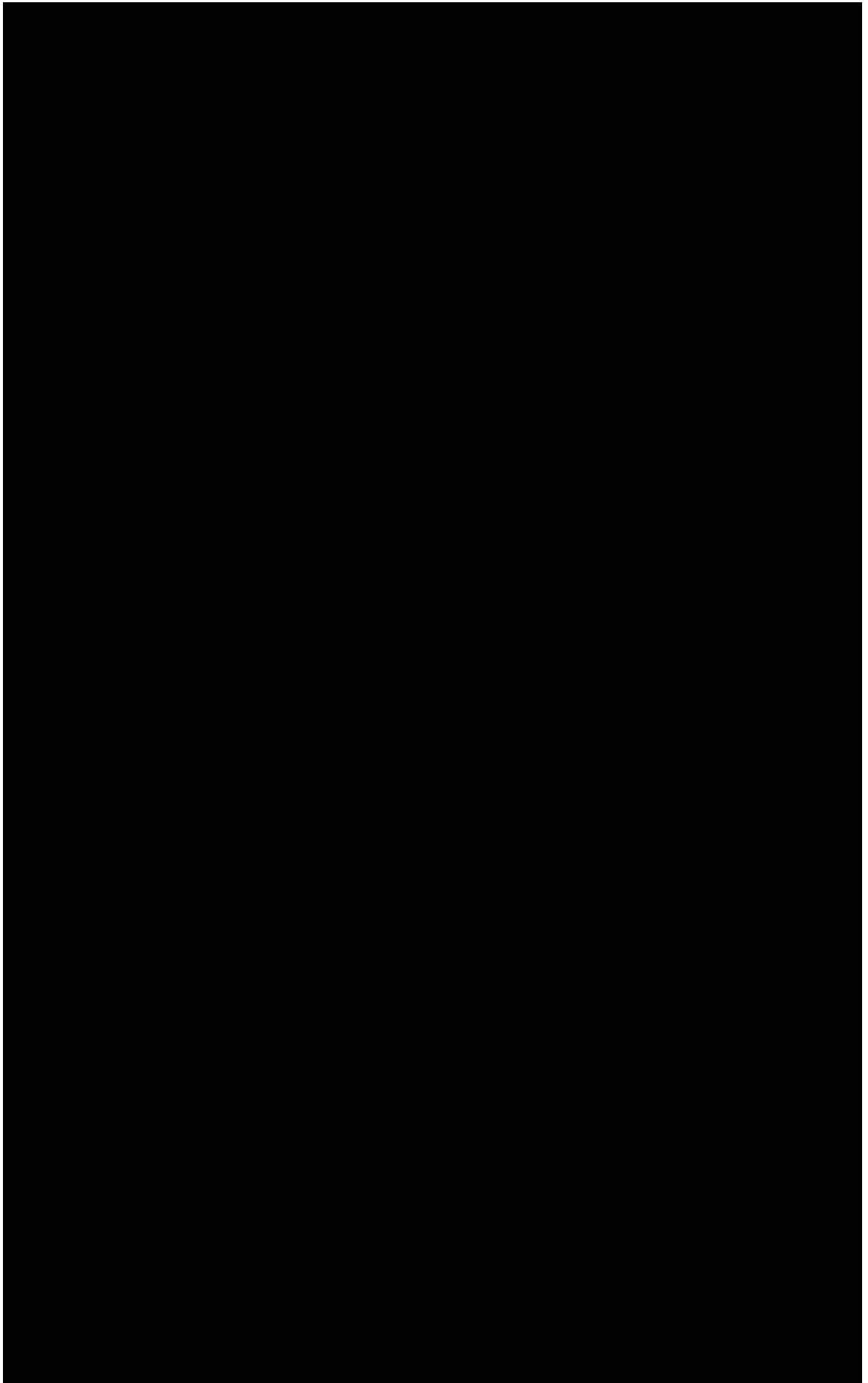
BY MR. ELSNER:



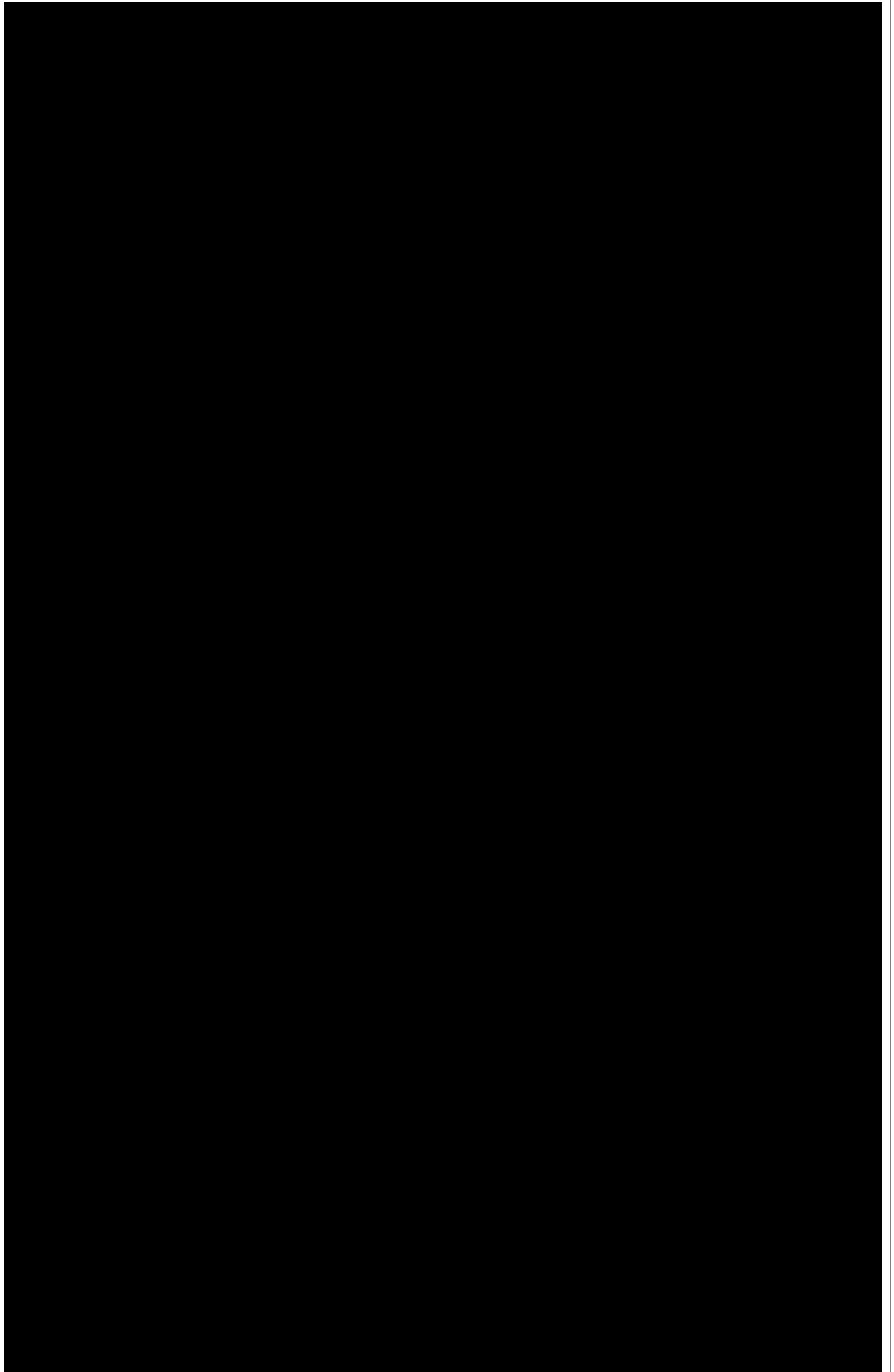
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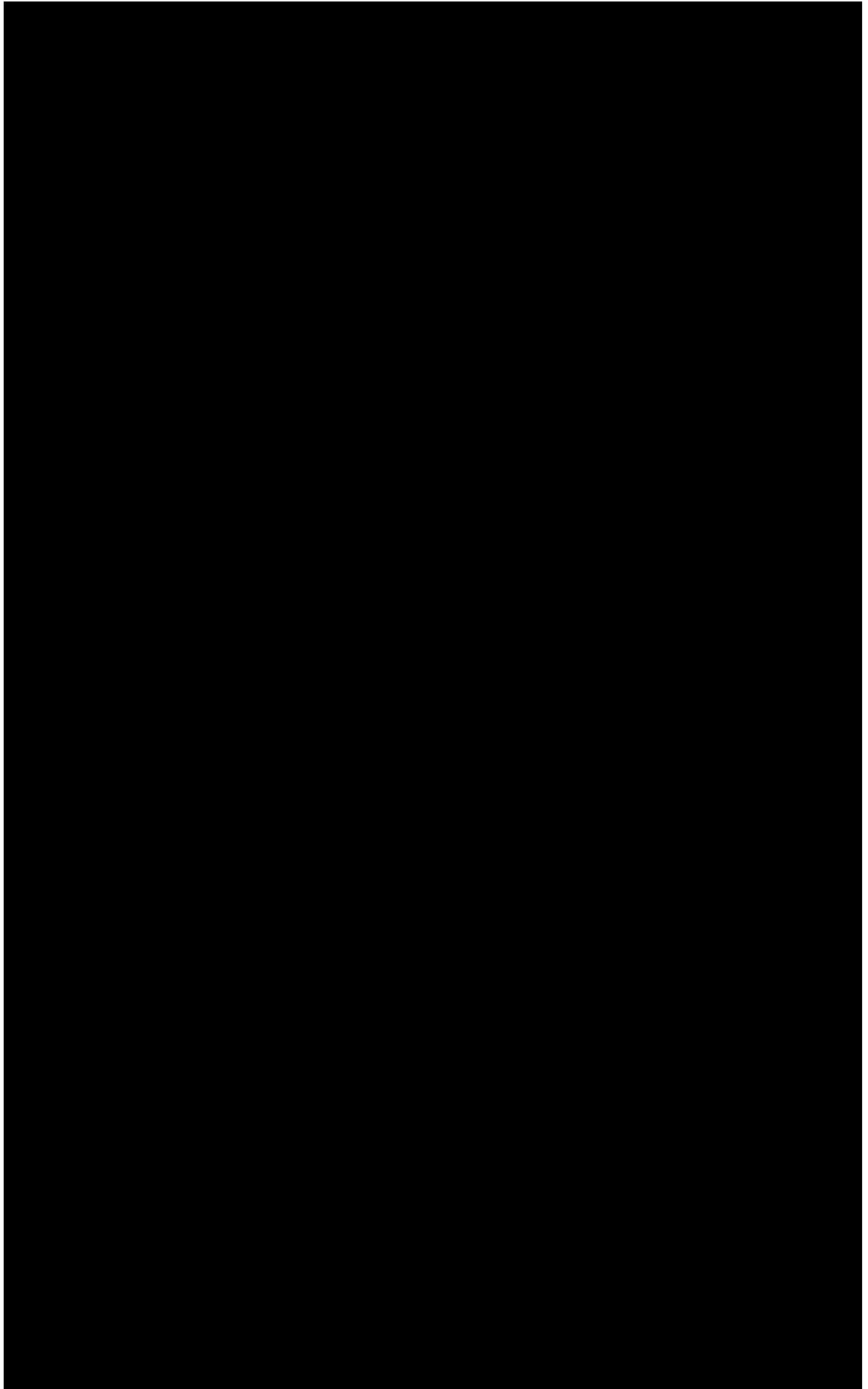
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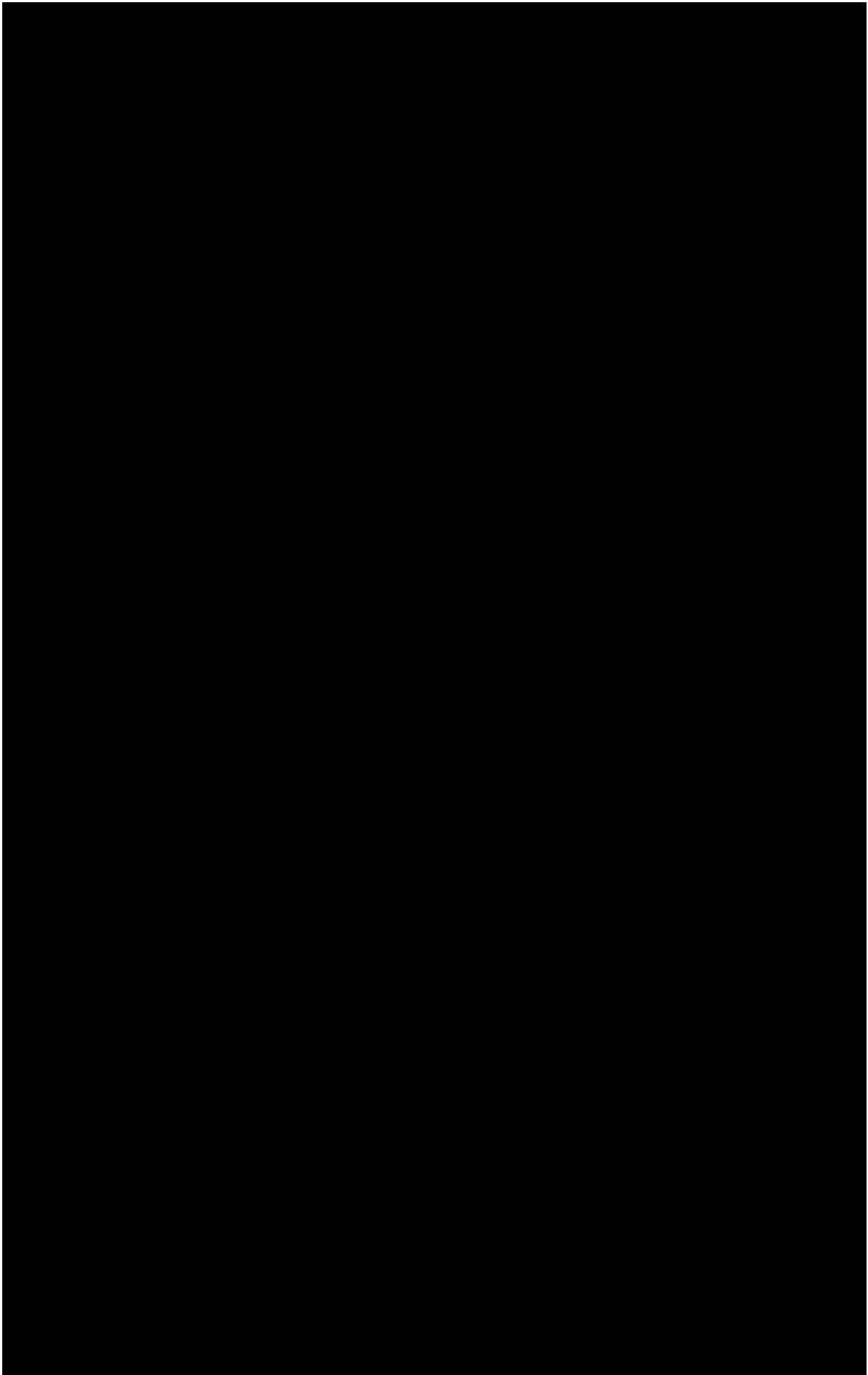
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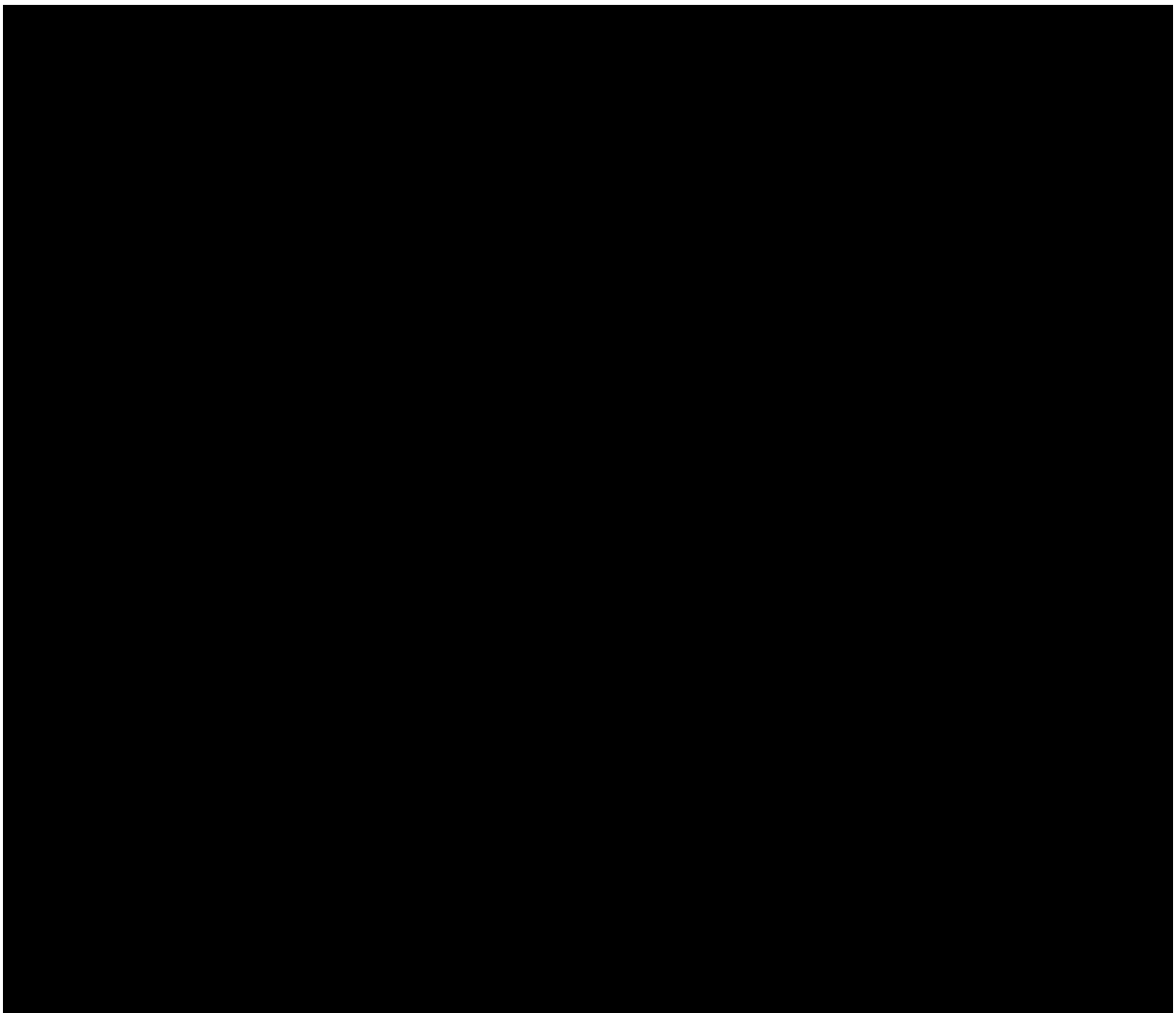
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BY MR. ELSNER:

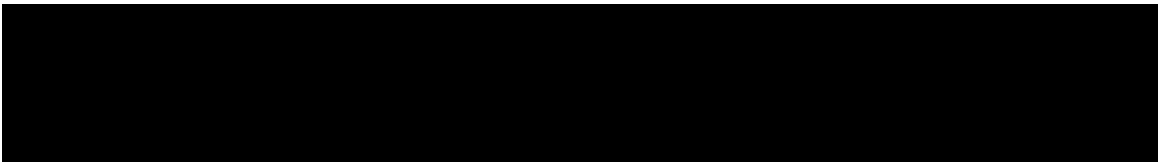
Q. Is that what you wrote --

A. That's what I wrote.

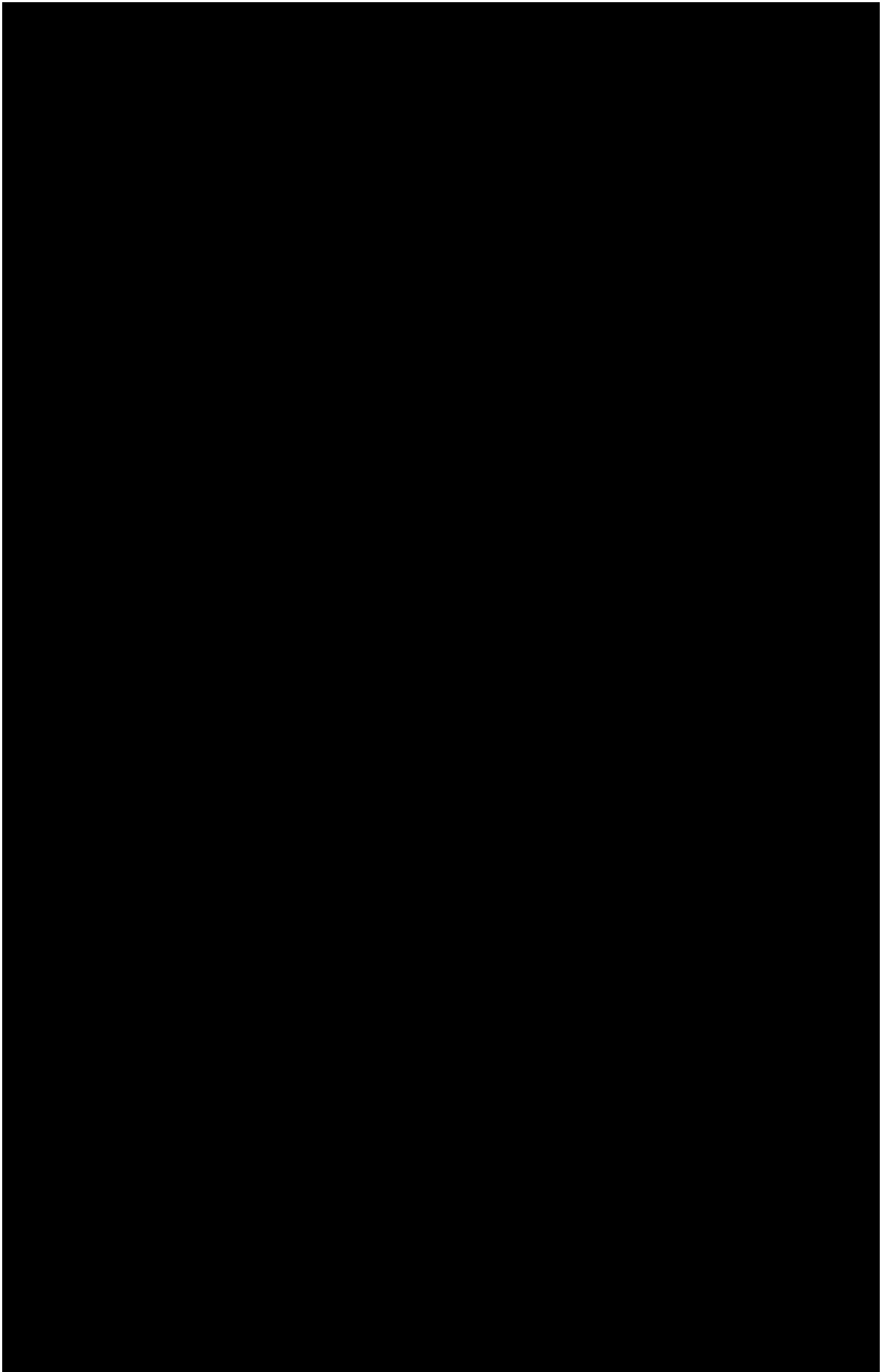
Q. -- to Mark Nicastro?

(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 29, for identification,
as of 01/24/2019.)

BY MR. ELSNER:



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1 BY THE WITNESS:

2 A. I don't -- I don't -- all right. Walk me
3 through something.

4 Are we sure what this -- is 29 directly
5 related to Exhibit 28?

6 BY MR. ELSNER:

7 Q. Yeah, let's look back at your e-mail.

8 A. Oh, okay.

9 Q. This is Exhibit 27.

10 A. I mean, I know we are talking about the
11 same type of problem. But, I mean, I want to see
12 something that says --

13 Q. Okay.

14 A. -- I'm talking about this and this and
15 this.

16 Q. Let's -- let's -- let's look at
17 Exhibit 27, the second page. Your e-mail to Craig
18 Schiavo on July 11th, 2013. This is 78117.

19 A. Hang on.

20 Q. You write:

21 "Craig, another concern I have is the
22 store metric report." That's what we are talking
23 about.

24 A. Yep.

1 Q. And then you write:

2 "The data snapshot is a three-month window
3 that is a year old."

4 A. Yeah, okay, you're right.

5 Q. So the issue related to the store metric
6 report was first raised in -- in December of 2012 and
7 it still hadn't been fixed in July of 2013 and you
8 brought it again to the attention of corporate because
9 you didn't want to get blamed if something slipped
10 through, right?

11 A. Well --

12 MR. CLARK: Objection to the form.

13 BY THE WITNESS:

14 A. -- I'm going to --

15 BY MR. ELSNER:

16 Q. Yes or no, is that what was written?

17 A. I'm going to say that I brought it to
18 their attention. What happened before that, I'm --
19 that's for you to decide. I'm not --

20 Q. Well, that will --

21 A. -- I'm going to let you know --

22 Q. -- be for the jury to decide.

23 A. Yeah.

24 Q. But that's what the e-mail says, right?

1 A. That's what this e-mail says here. It
2 said what you said it said. And what -- I brought it
3 up when I said -- when I brought it up.

4 Q. Okay. And you said that the -- that the
5 three-month window you are looking at now is a year
6 old.

7 That's what you wrote, right?

8 A. Yeah, okay.

9 Q. "The data snapshot is a three-month window
10 that is a year old."

11 That's what you wrote, right?

12 A. Yeah, I -- that's what I write. And it
13 sounds --

14 Q. And then -- and then you write --

15 A. Probably.

16 Q. -- "And any analysis that I make from the
17 data is for the most part irrelevant and pointless."

18 That's what you wrote, right?

19 A. Yeah, if the data would be a year old,
20 then it wouldn't make --

21 Q. It -- it would be irrelevant and
22 pointless?

23 A. Well, from a -- to me in my mind it was
24 irrelevant if it's not current, you know.

1 Q. And there is a risk that if you don't use
2 the right data that something could slip through,
3 right?

4 MR. CLARK: Objection to form, asked and
5 answered.

6 BY MR. ELSNER:

7 Q. That's what you wrote?

8 A. Yeah. Yeah, I think so. I think that's
9 what I wrote.

10 Q. And that makes sense, right?

11 A. Yeah.

12 Q. If you don't use the right data, then you
13 are not going to be able to check the system, right?

14 A. I don't even -- even "right." Just it may
15 be the right data, just not current.

16 Q. Not current?

17 A. Yeah.

18 Q. It needs to be current data, right?

19 A. Correct.

20 Q. All right. So at this point in time, just
21 to orient you, this is July 2013.

22 A. Okay.

23 Q. You're doing your job, you're encountering
24 some problems with -- with some of the metric reports,

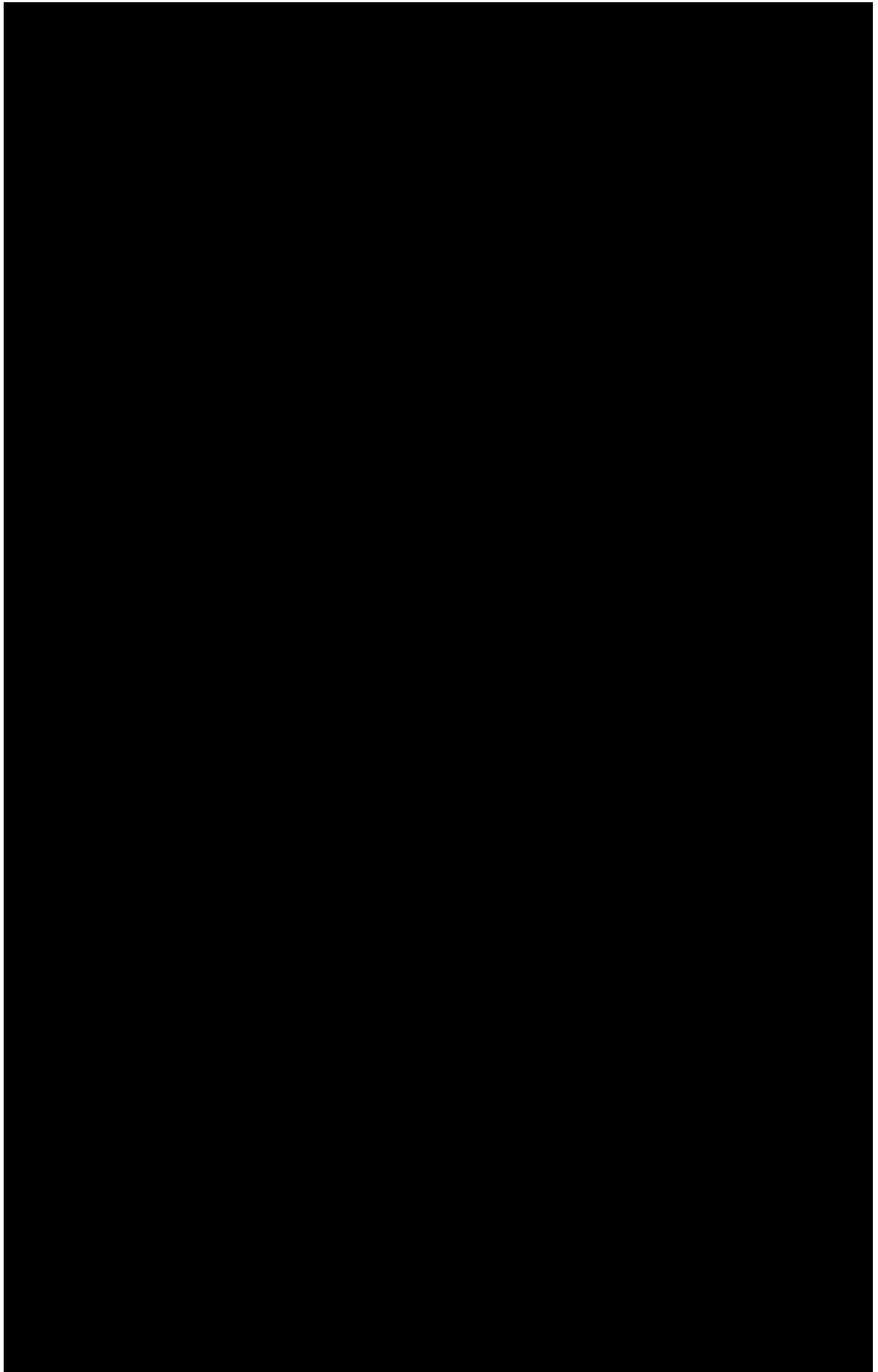
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Q. Okay. Well, let's look at Exhibit 30.

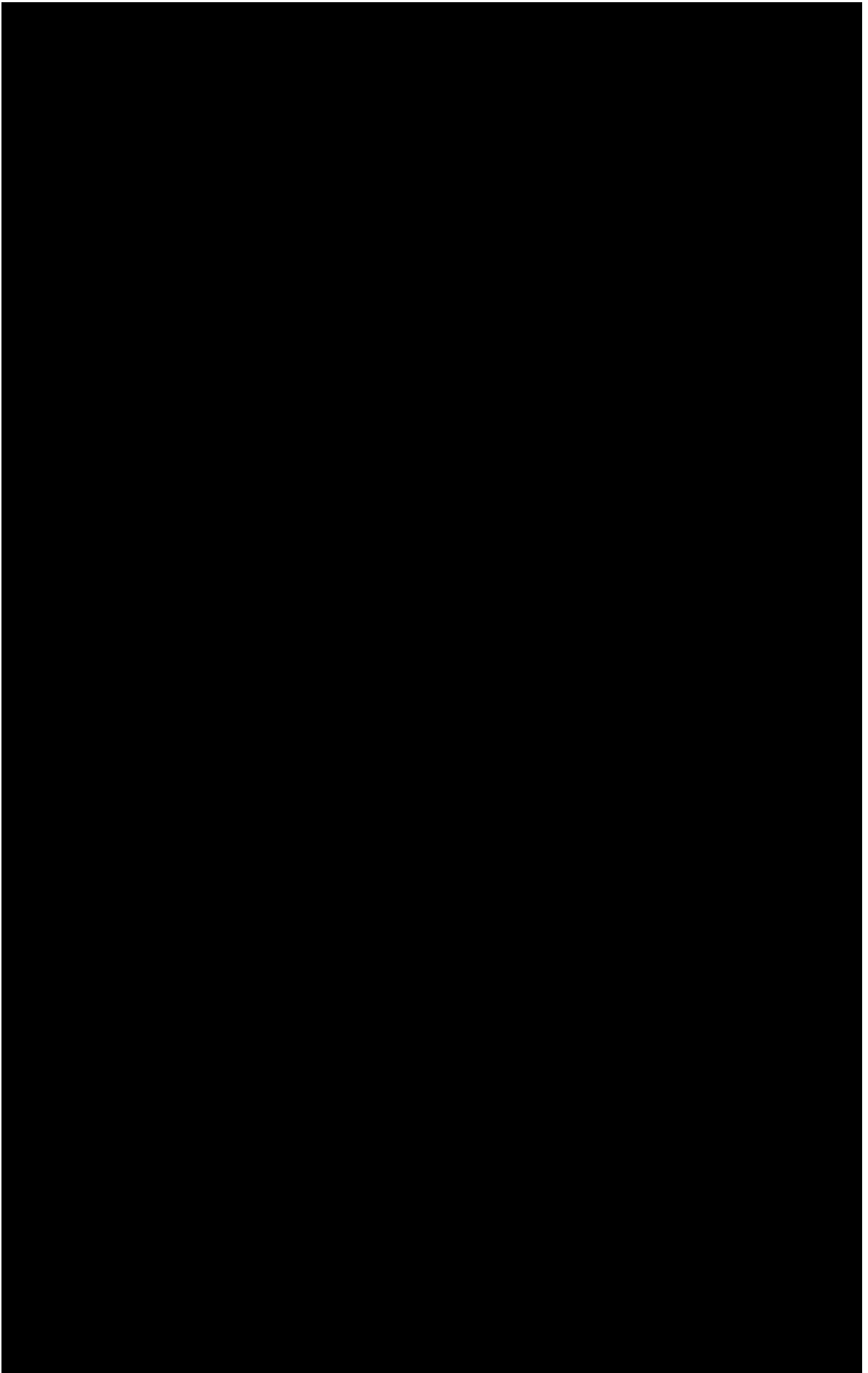
(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 30, for identification,
as of 01/24/2019.)

BY THE WITNESS:

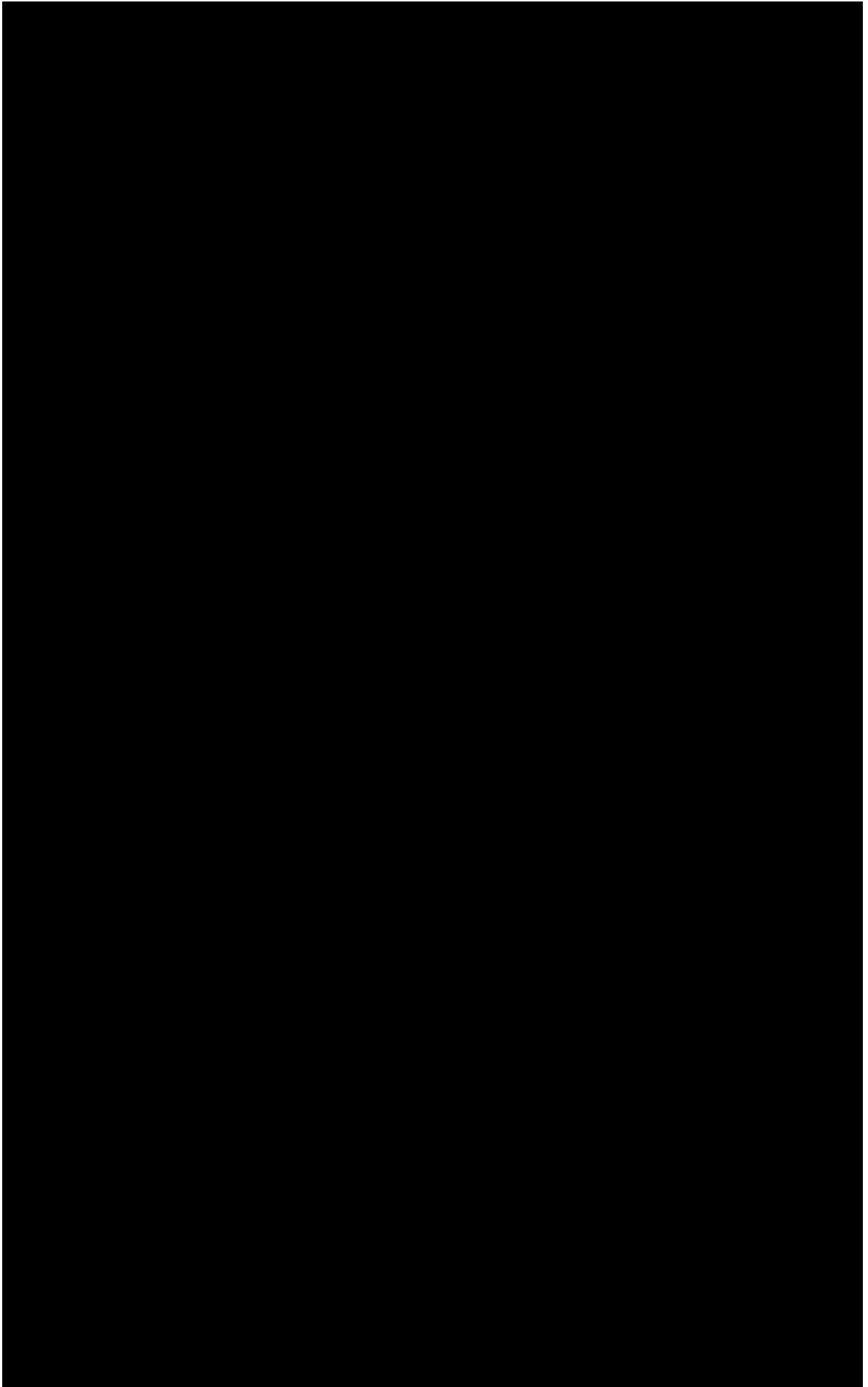
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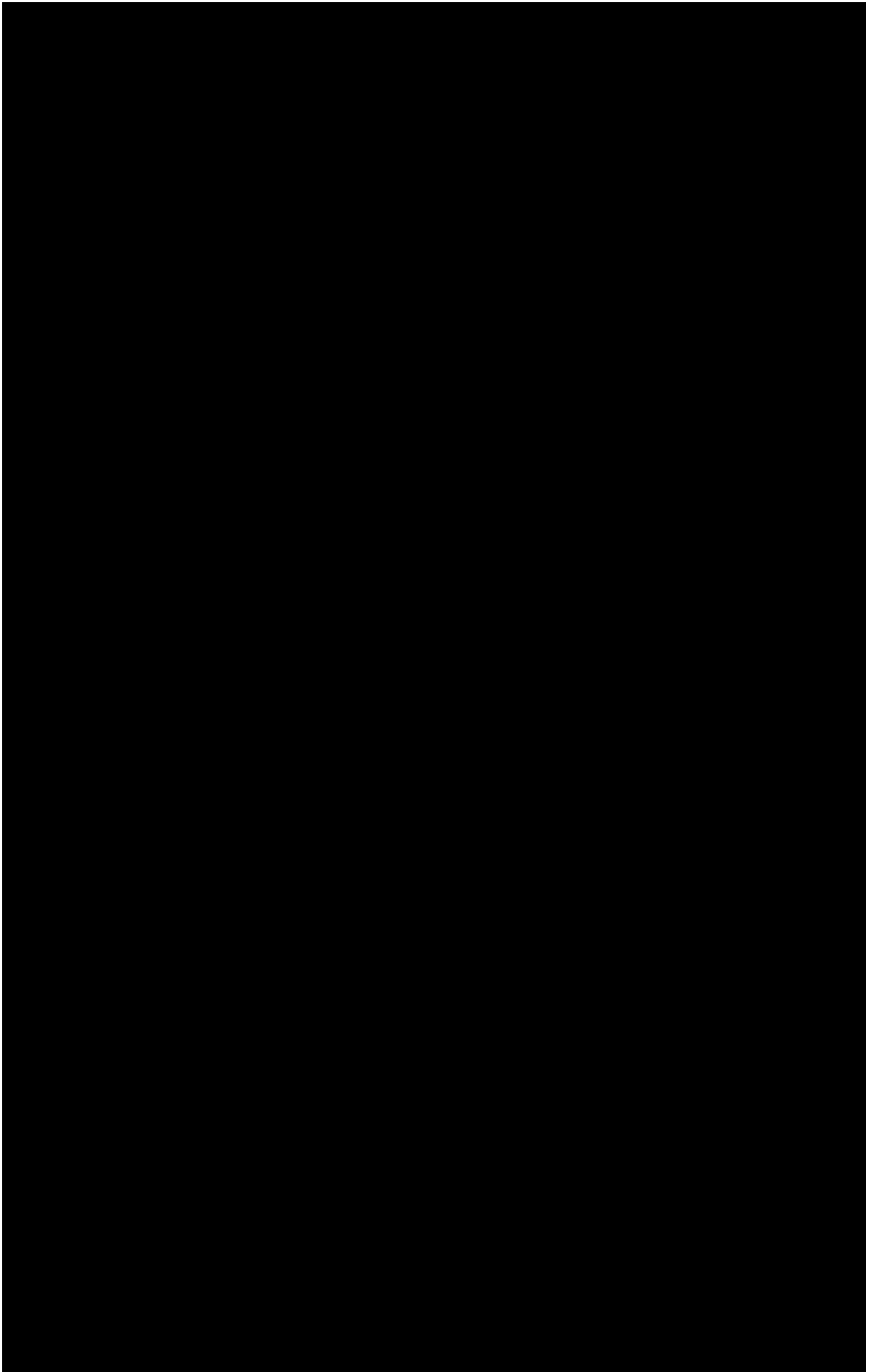
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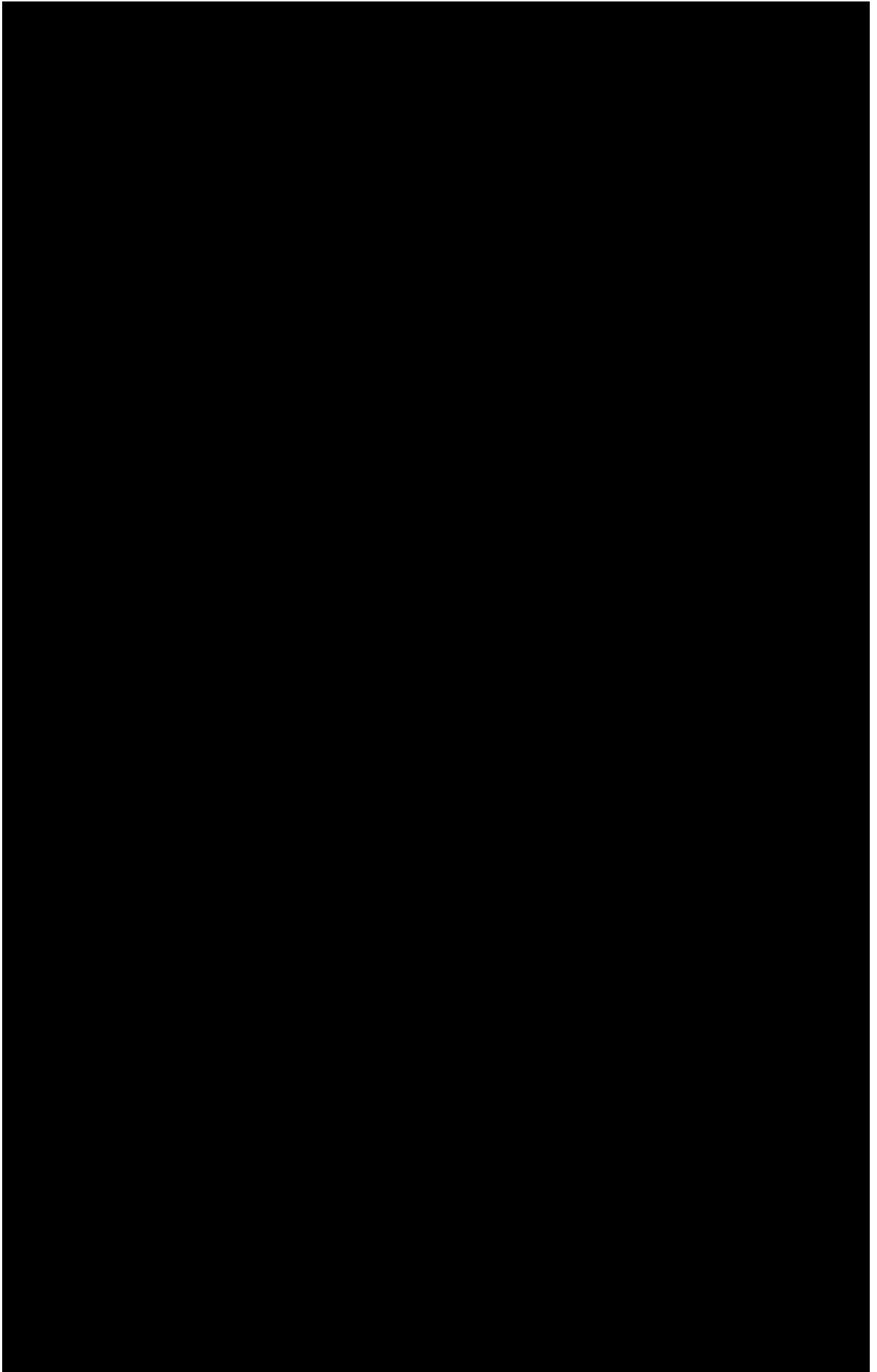
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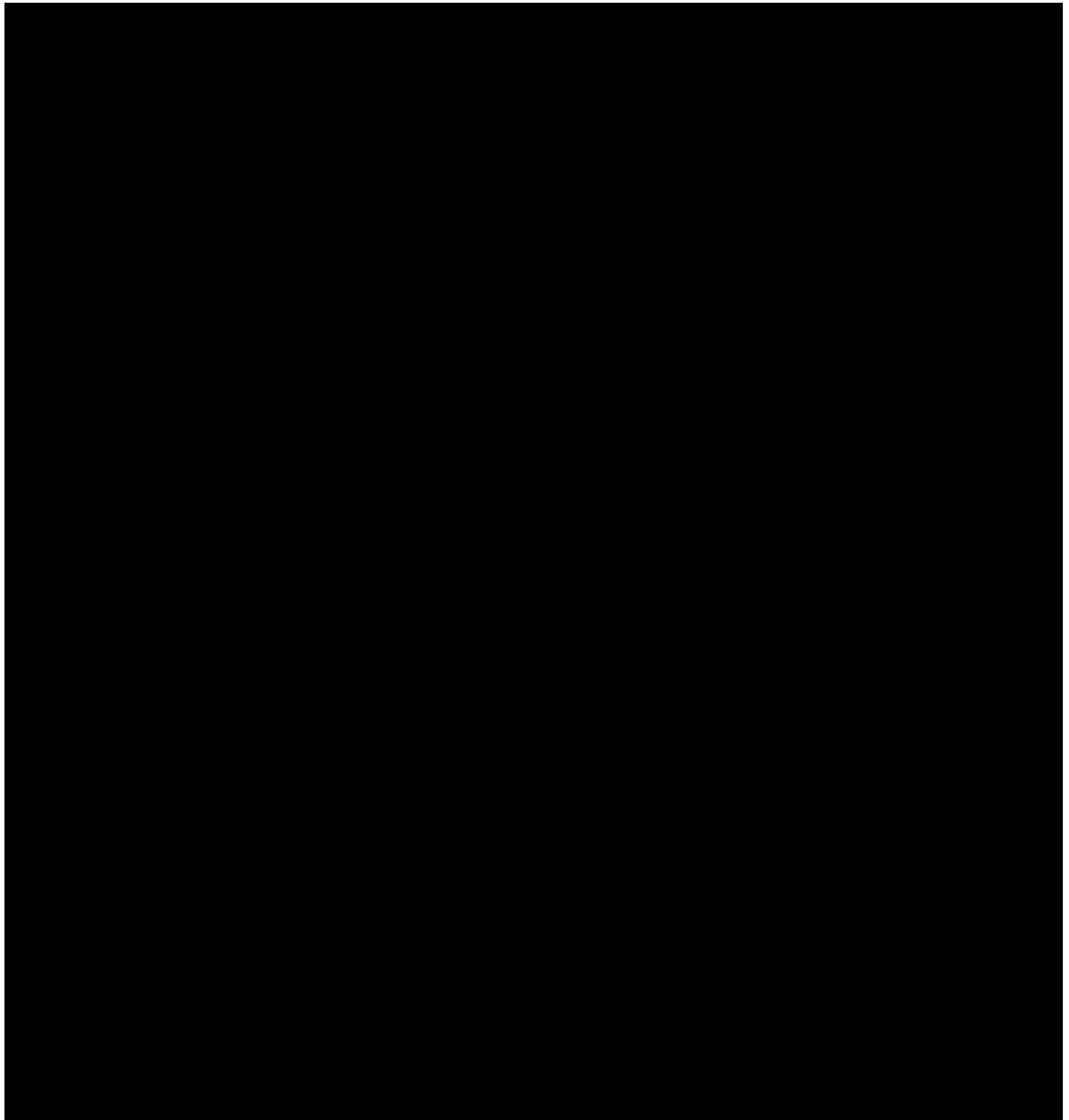
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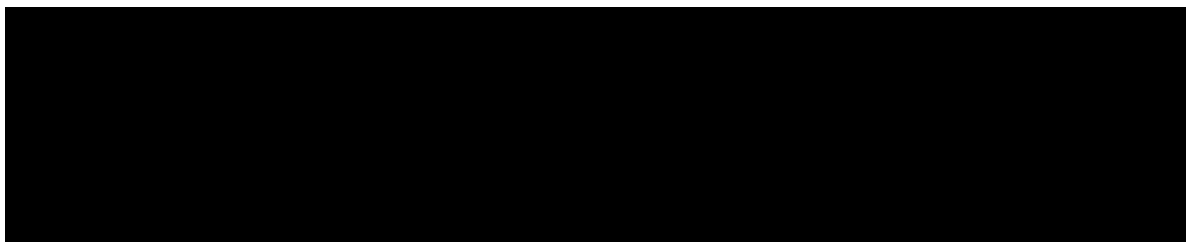
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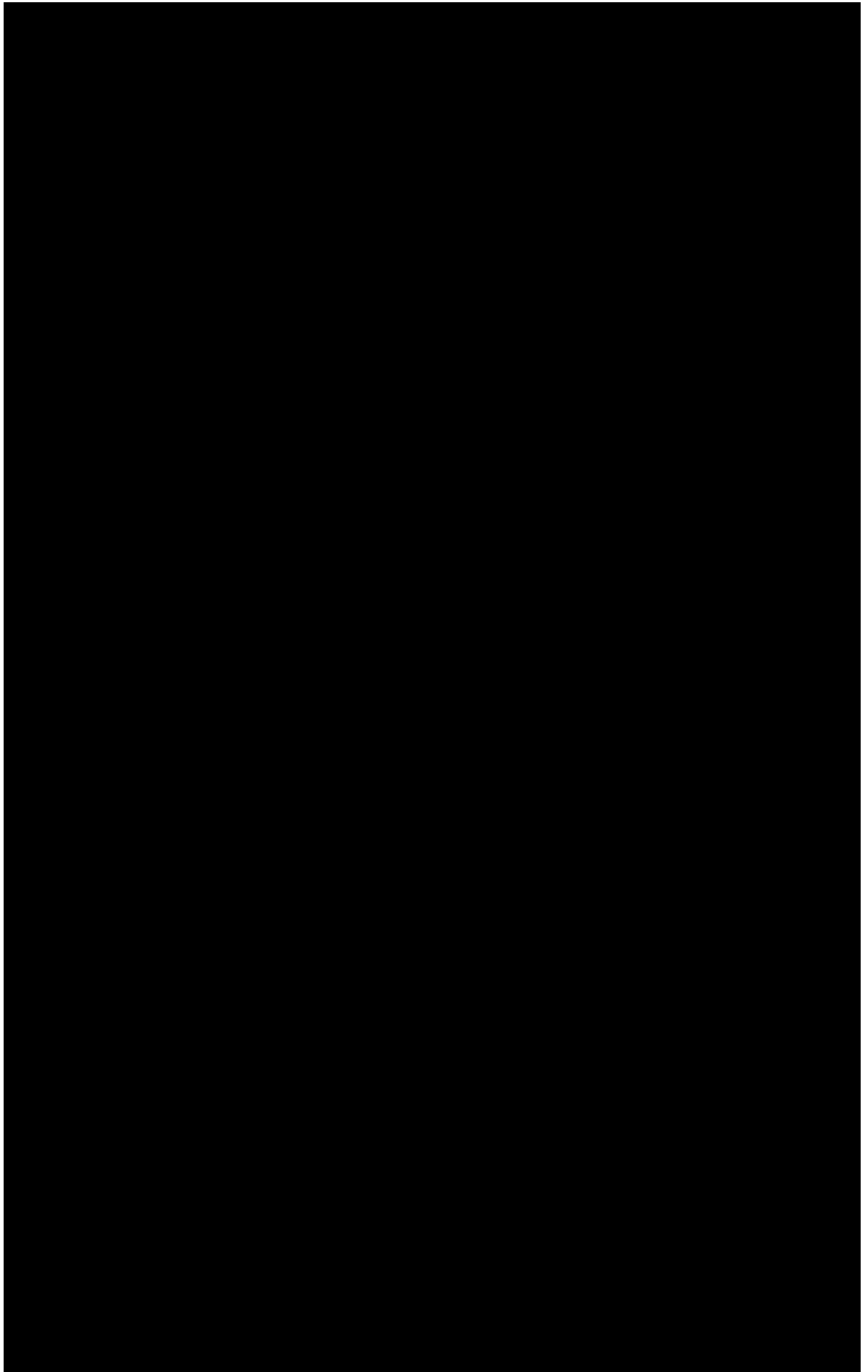
17 (WHEREUPON, a certain document was
18 marked CVS - Elsner Deposition
19 Exhibit No. 31, for identification,
20 as of 01/24/2019.)

21 BY MR. ELSNER:

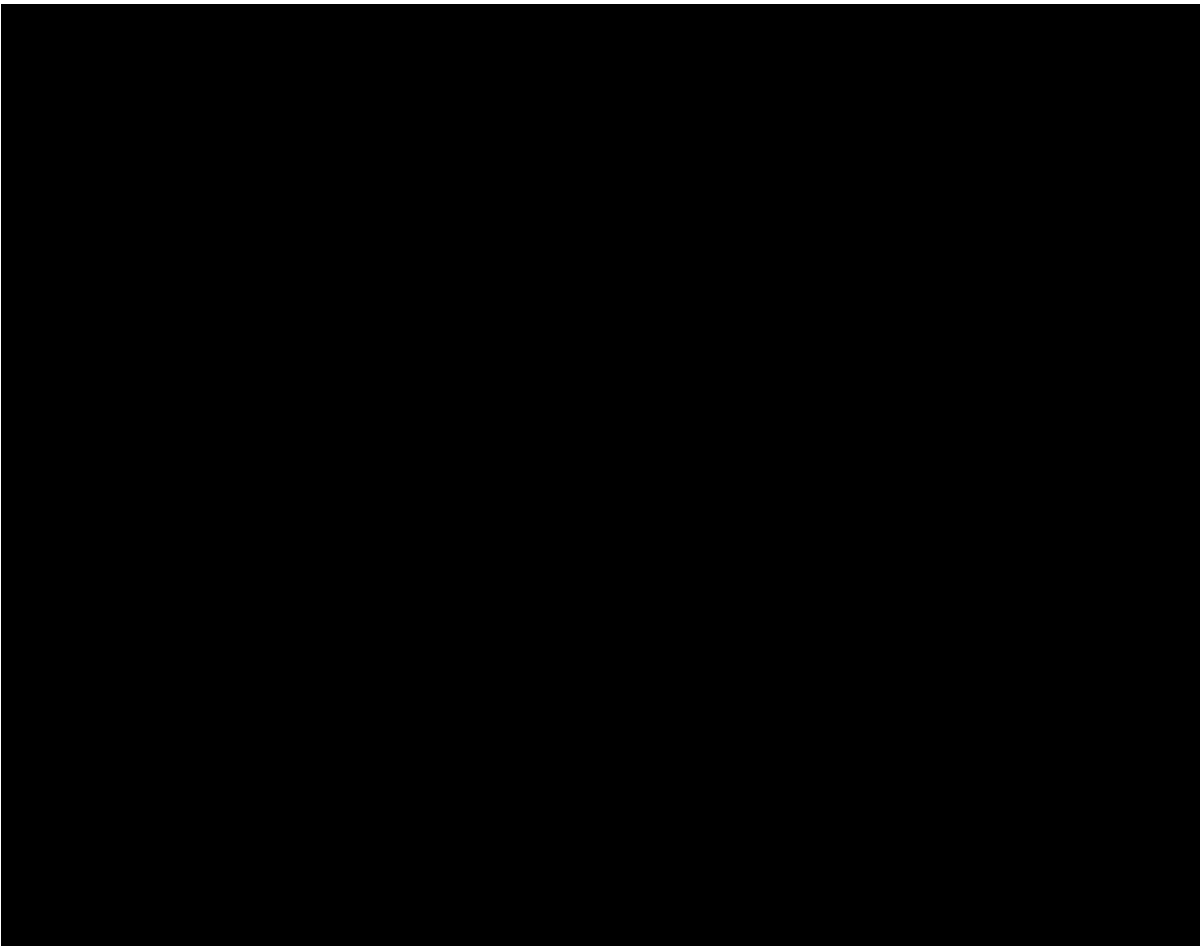
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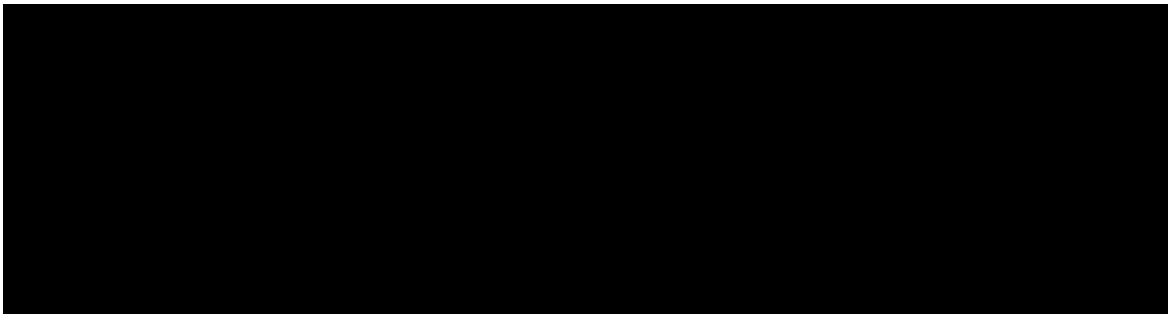


BY MR. ELSNER:

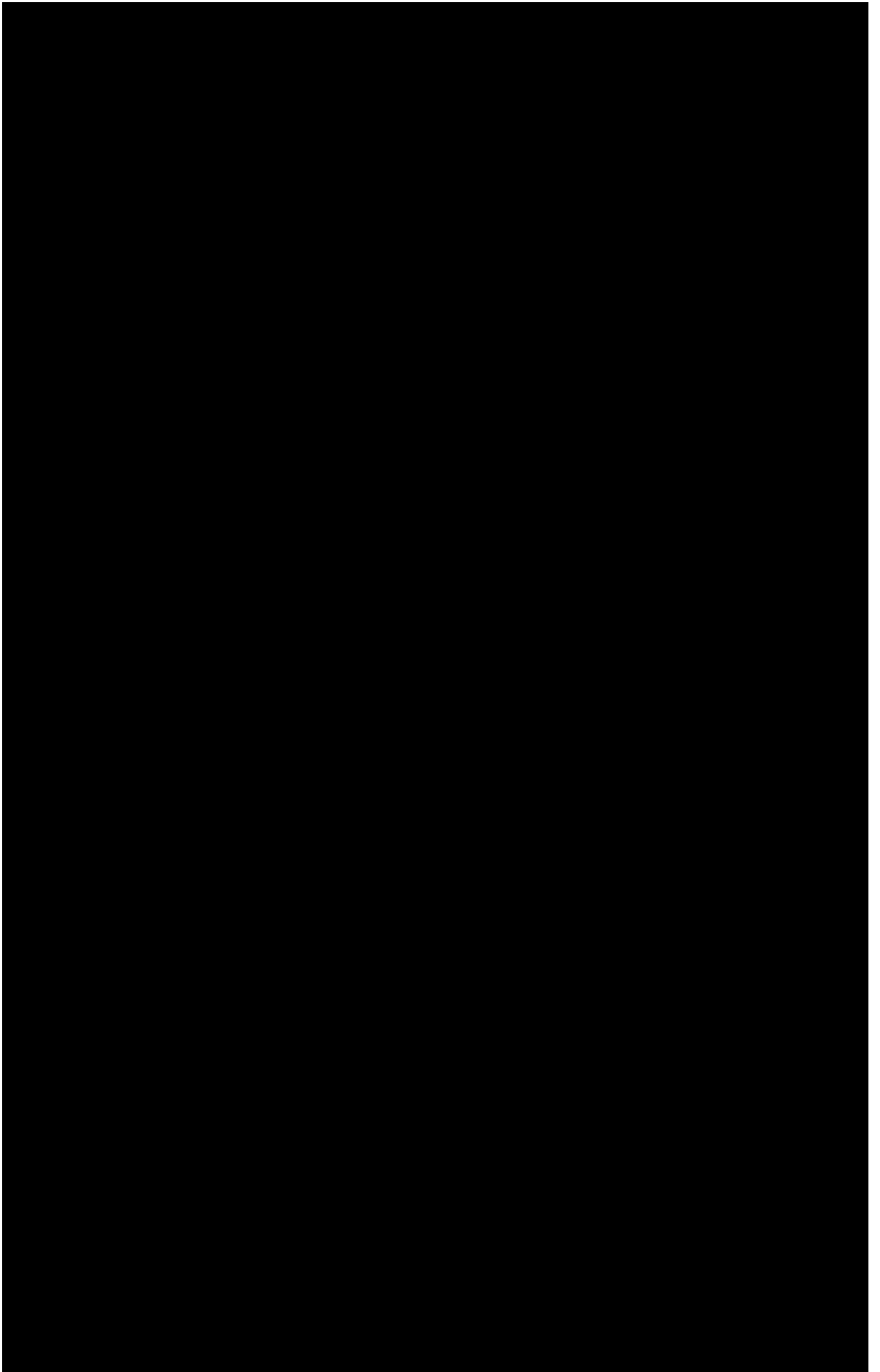
Q. Let's look at the next -- this next exhibit.

(WHEREUPON, a certain document was marked CVS - Elsner Deposition Exhibit No. 32, for identification, as of 01/24/2019.)

BY MR. ELSNER:



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10 Q. Okay.

11 MR. ELSNER: Why don't we take a quick break.

12 We've been going about an hour.

13 THE VIDEOGRAPHER: We are off the record at

14 2:16 p.m.

15 (WHEREUPON, a recess was had

16 from 2:16 to 2:31 p.m.)

17 THE VIDEOGRAPHER: We are back on the record at

18 2:31 p.m.

19 BY MR. ELSNER:

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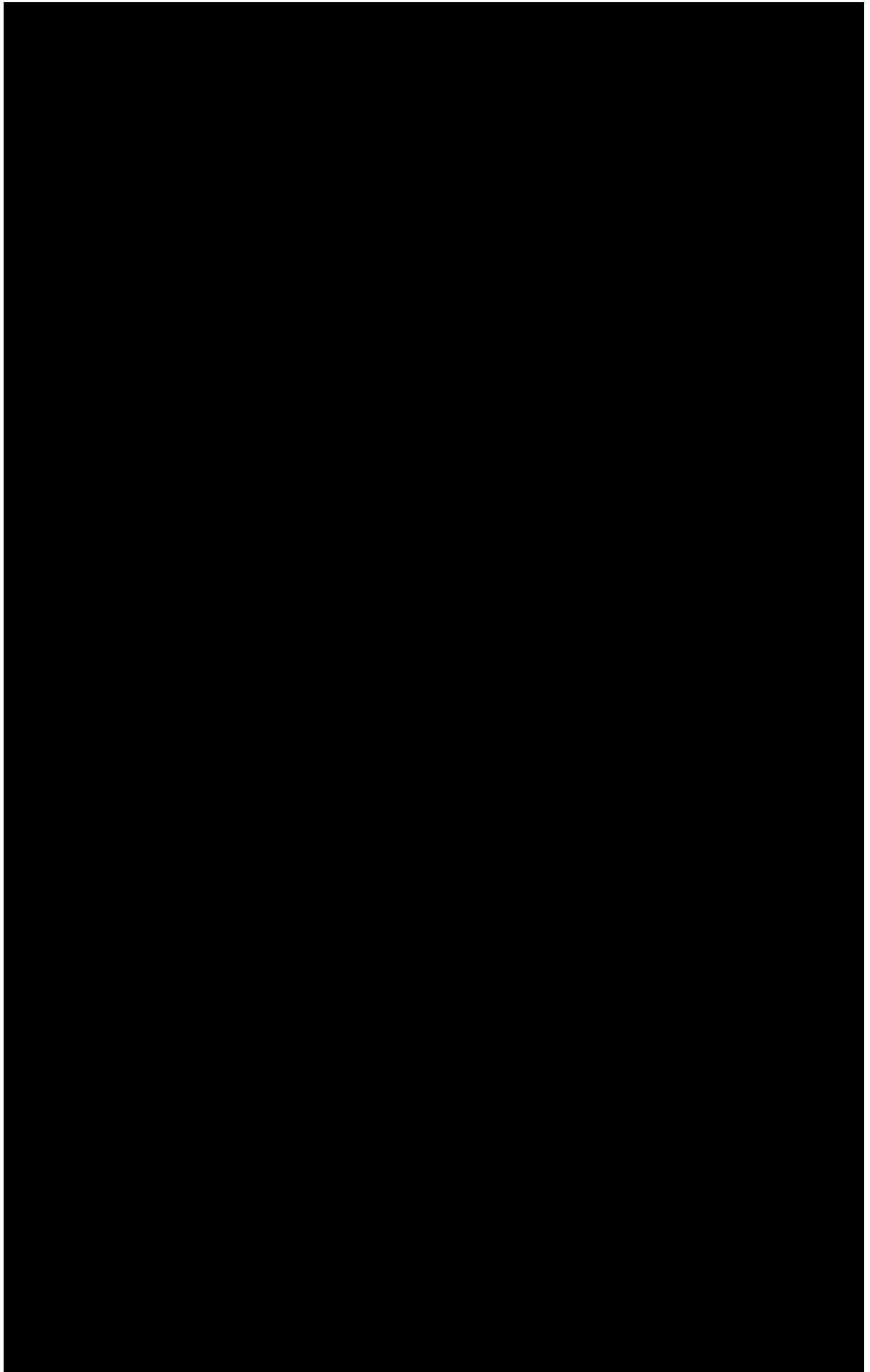
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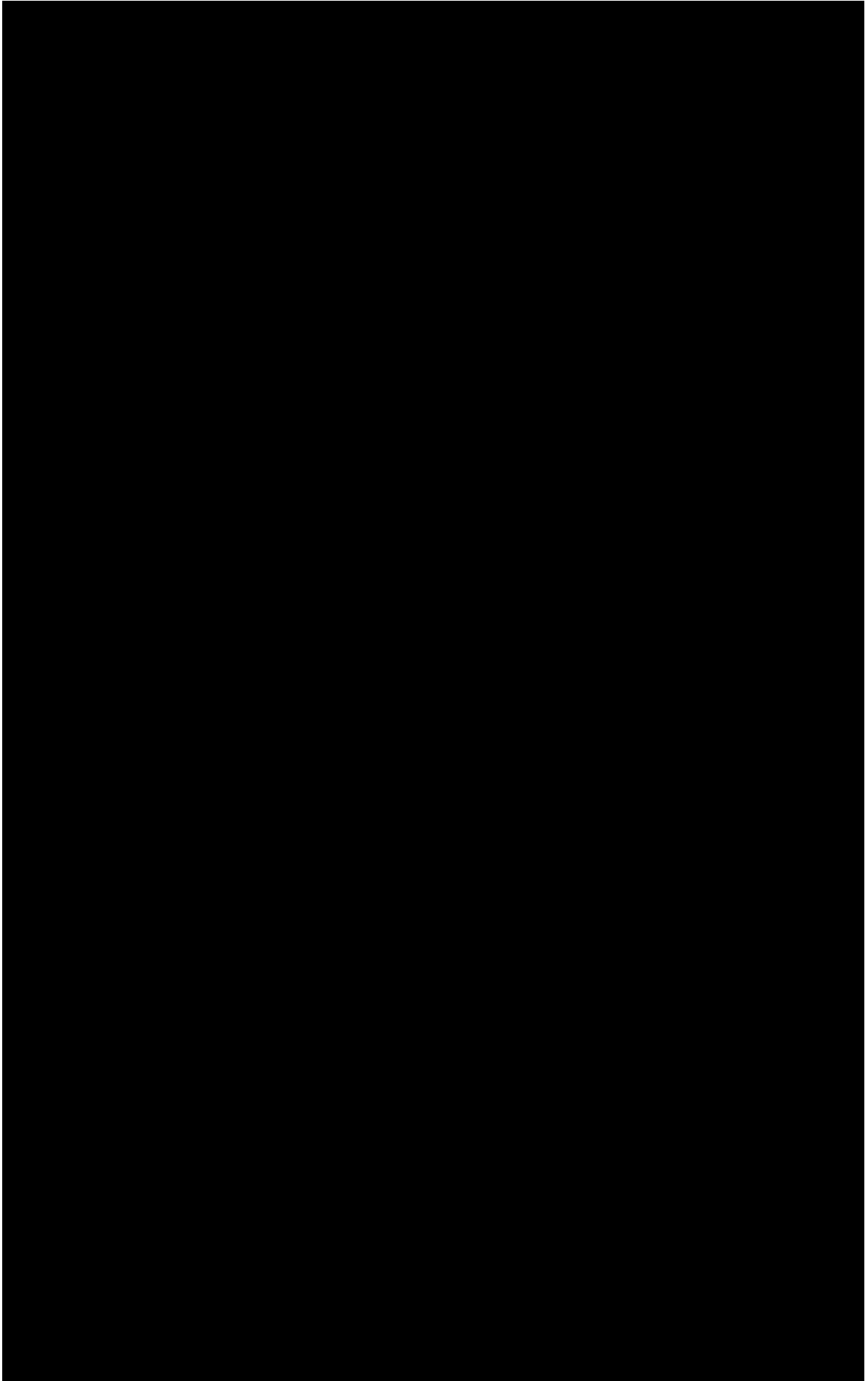
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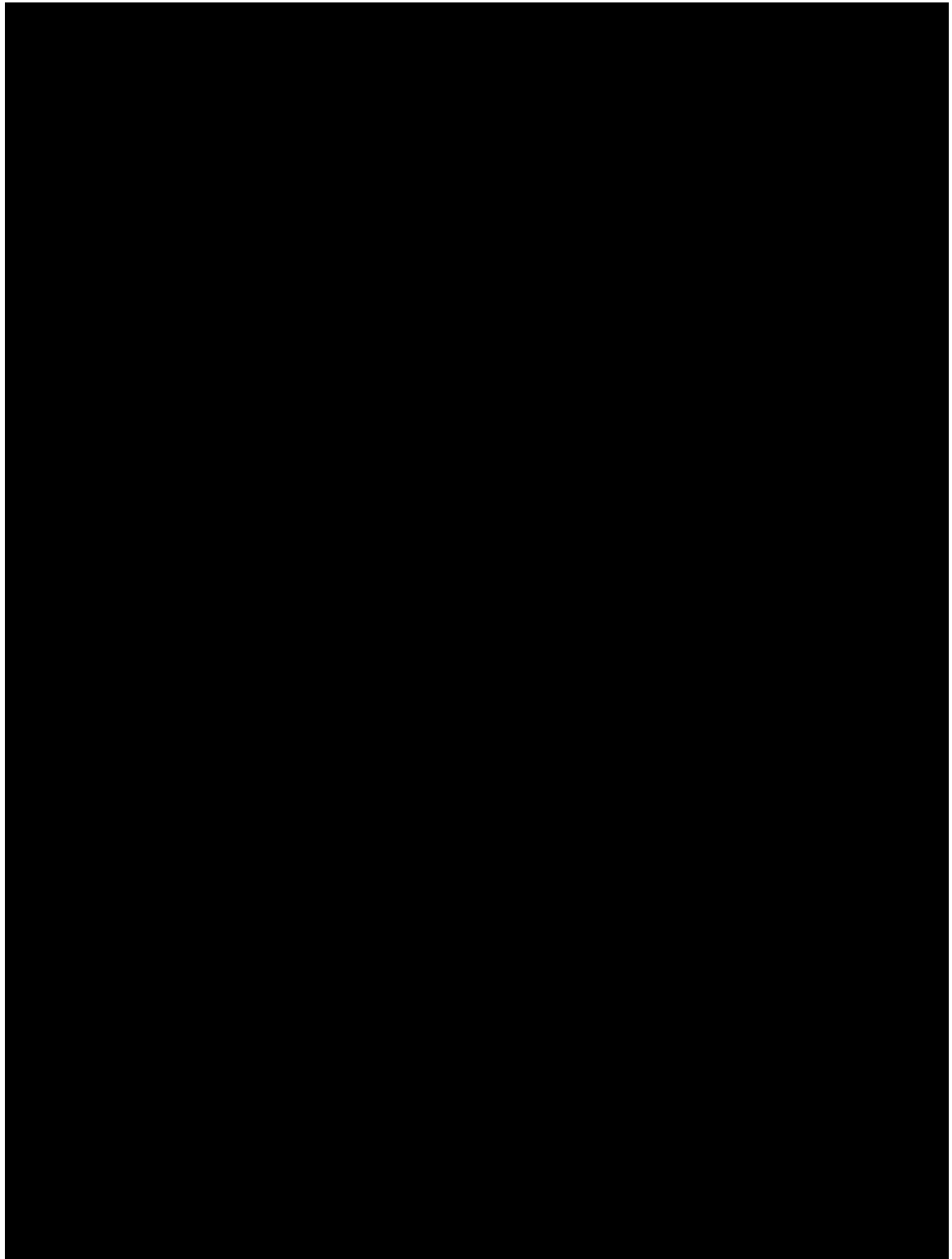
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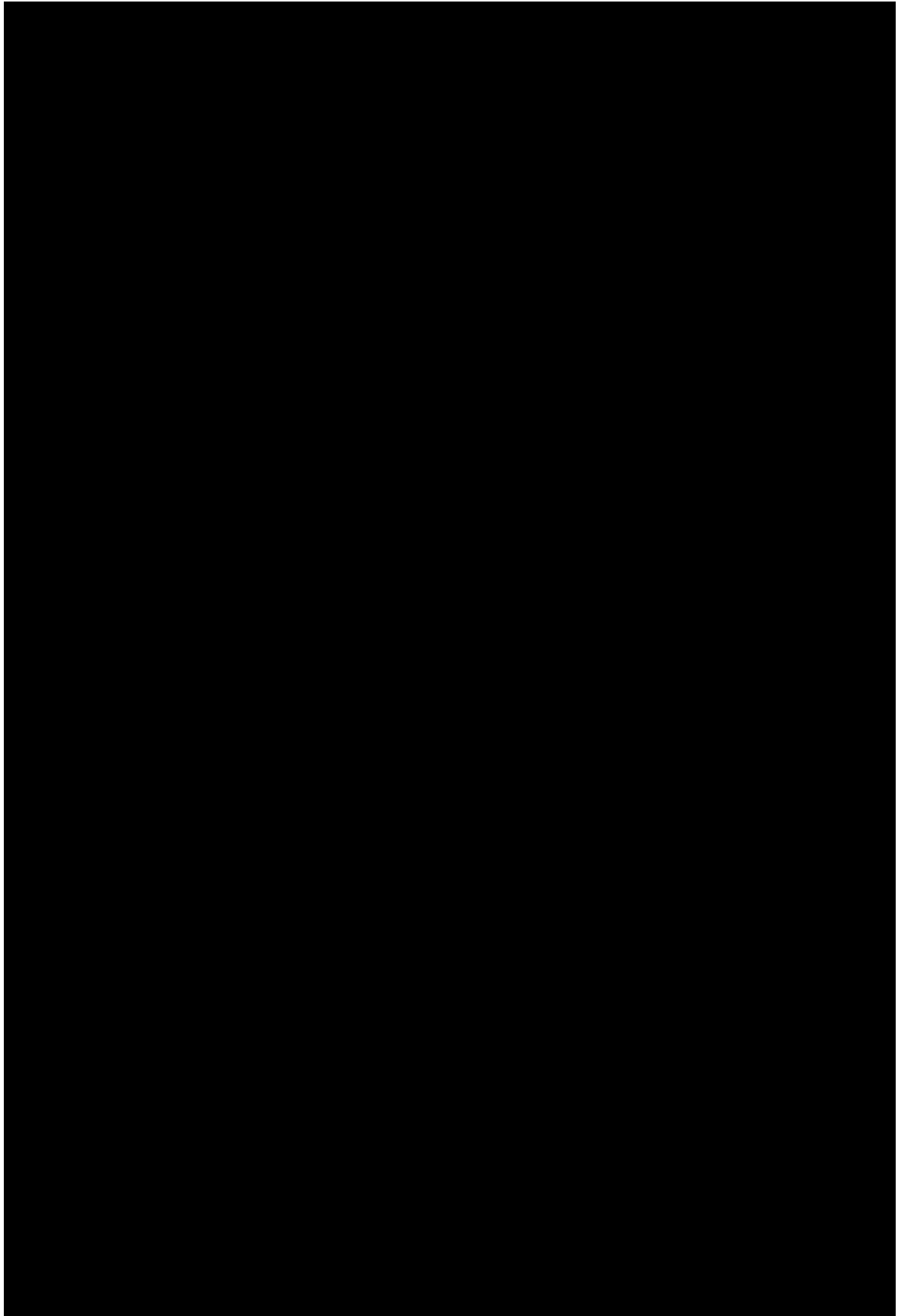


21 Q. You could be faster, yeah.
22 (WHEREUPON, a certain document was
23 marked CVS - Elsner Deposition
24 Exhibit No. 33, for identification,

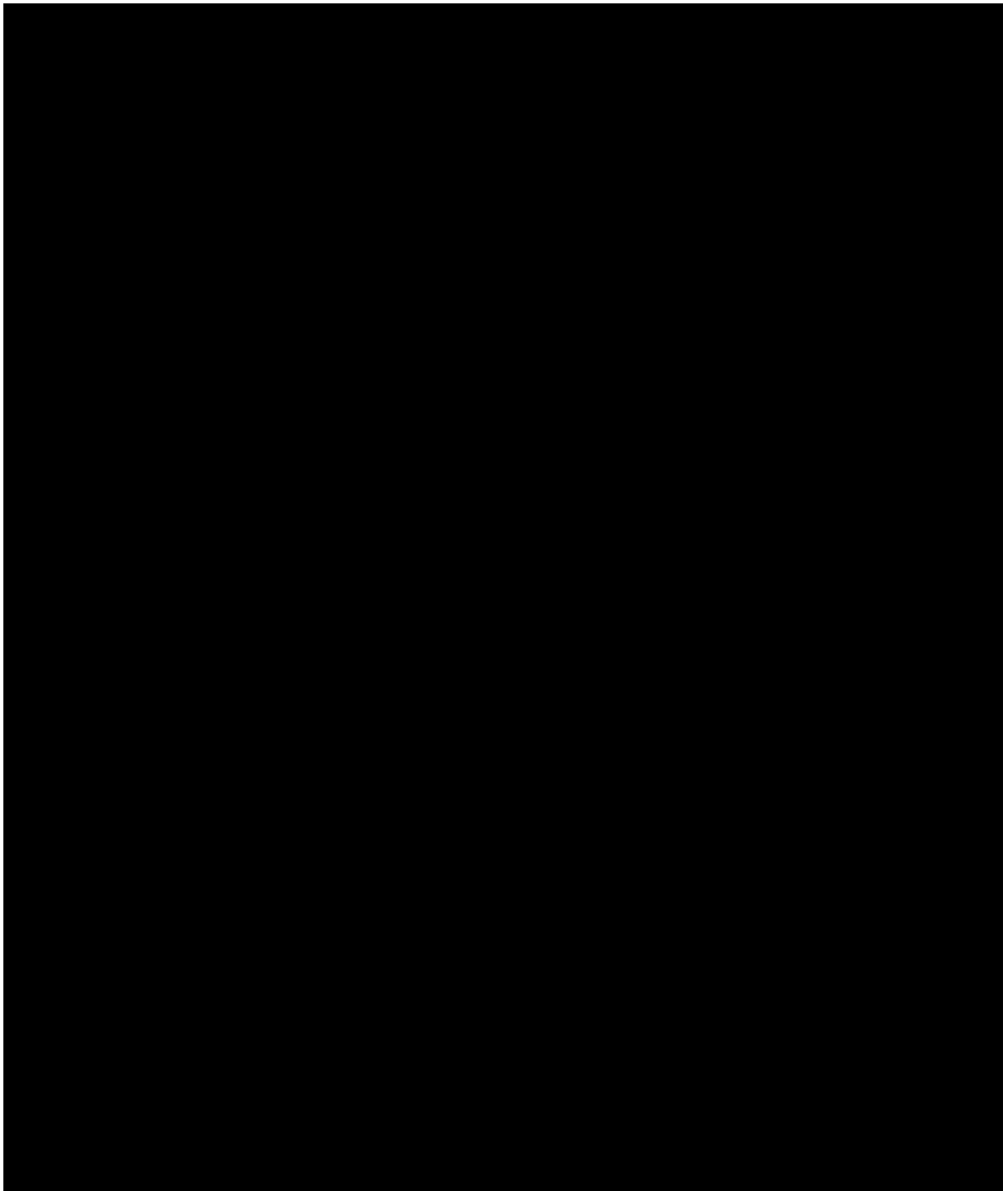
1 as of 01/24/2019.)

2 BY MR. ELSNER:

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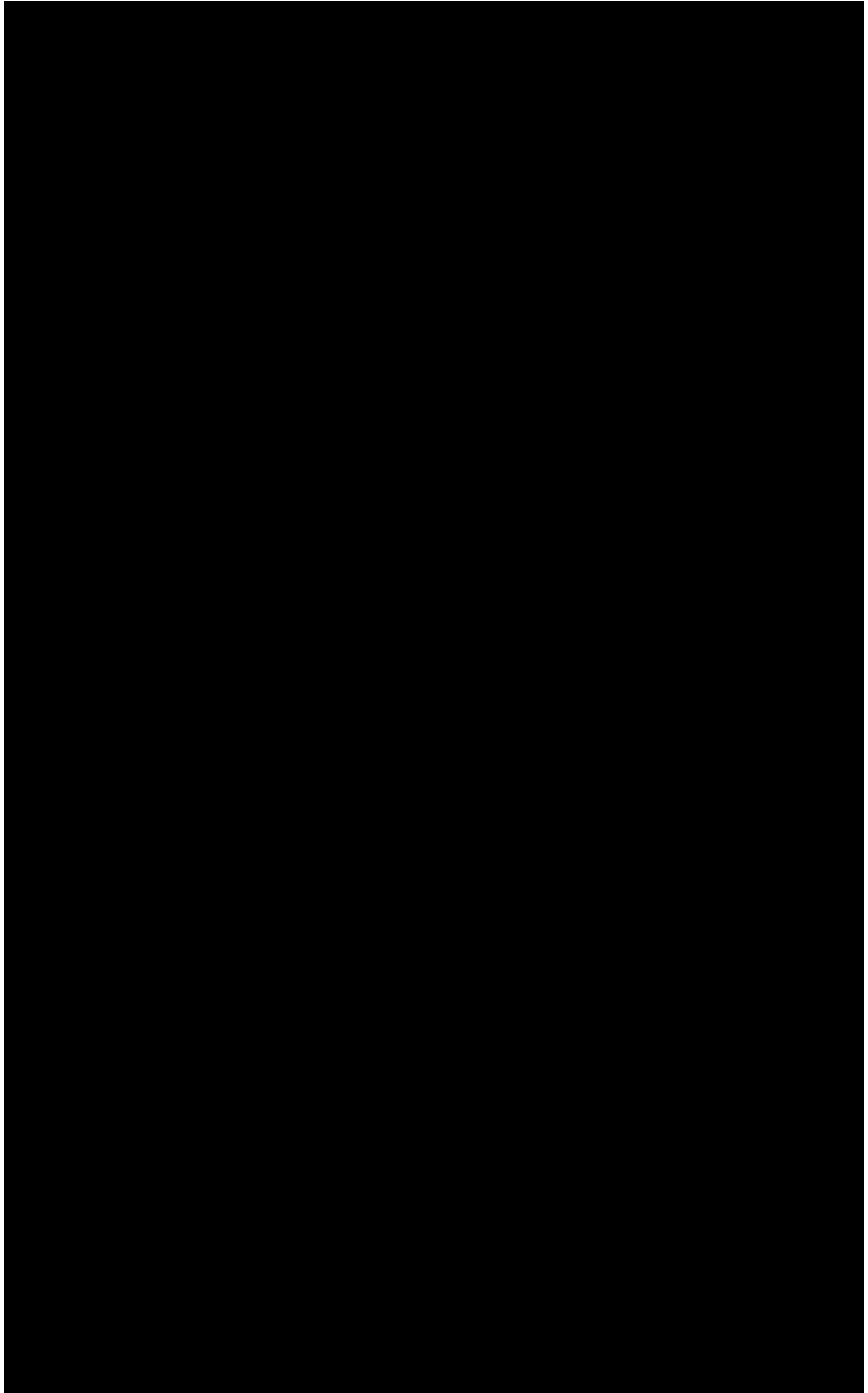


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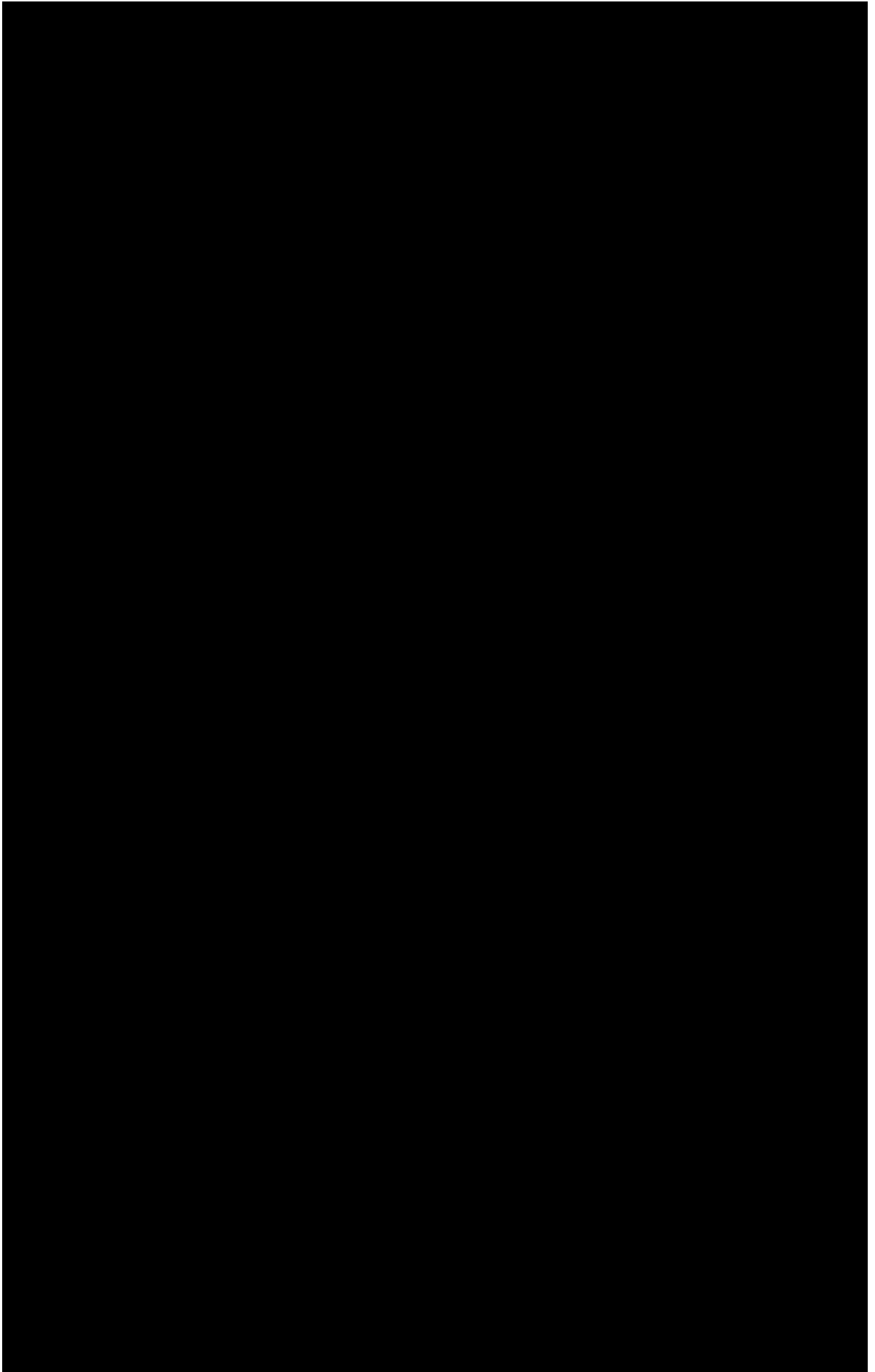


19 Q. Yeah. Let me show you Exhibit 34.
20 (WHEREUPON, a certain document was
21 marked CVS - Elsner Deposition
22 Exhibit No. 34, for identification,
23 as of 01/24/2019.)
24 BY MR. ELSNER:

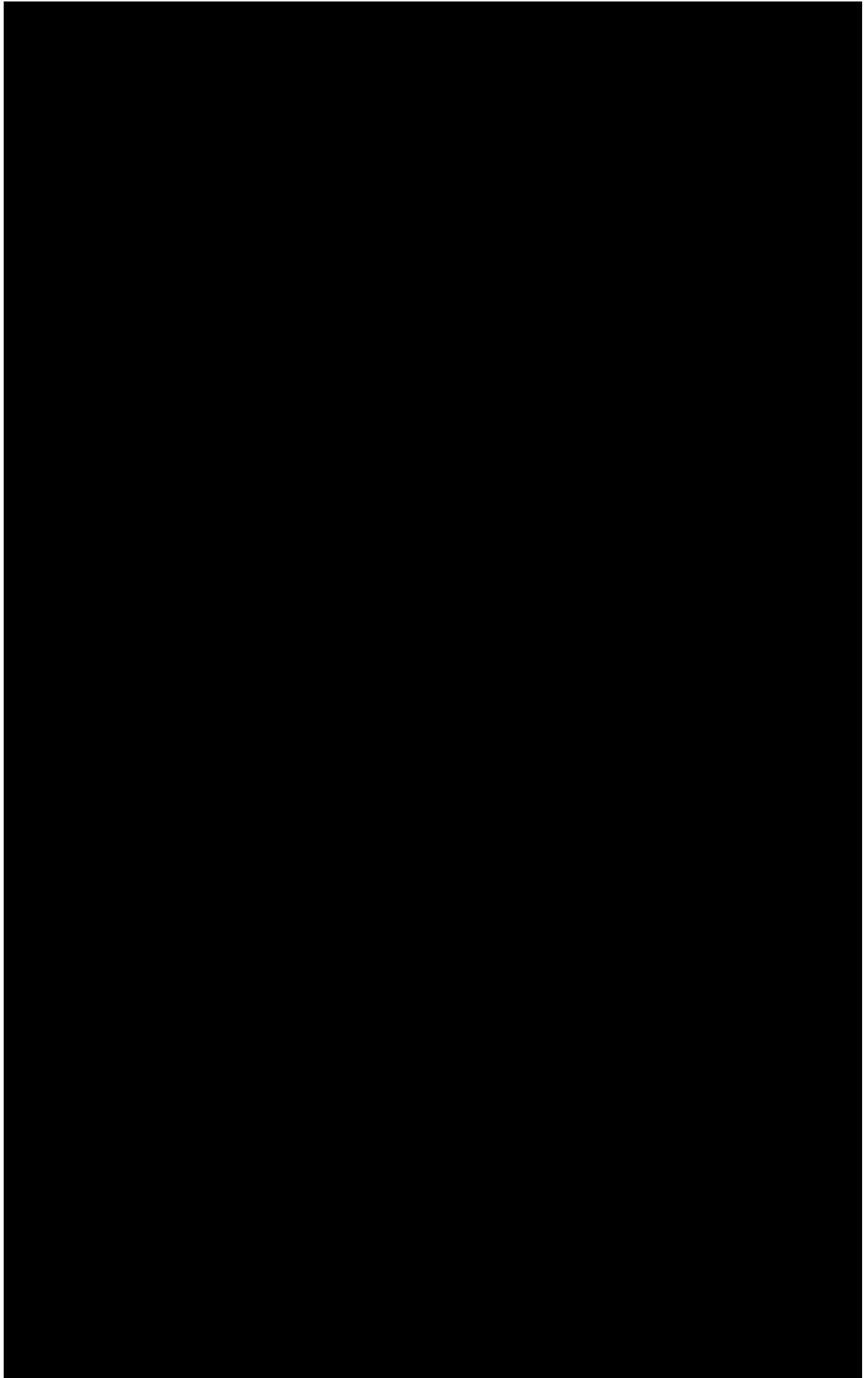
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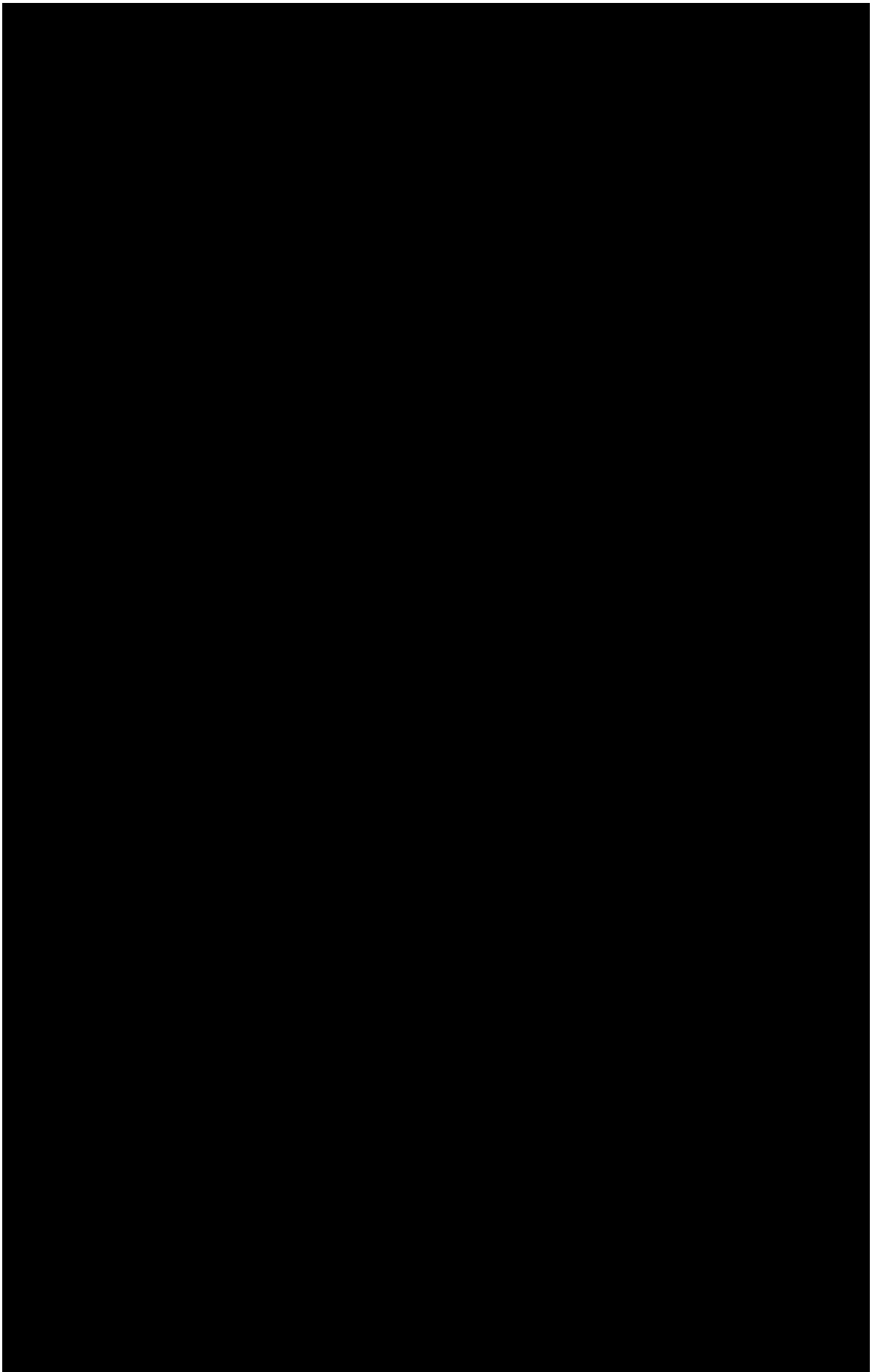
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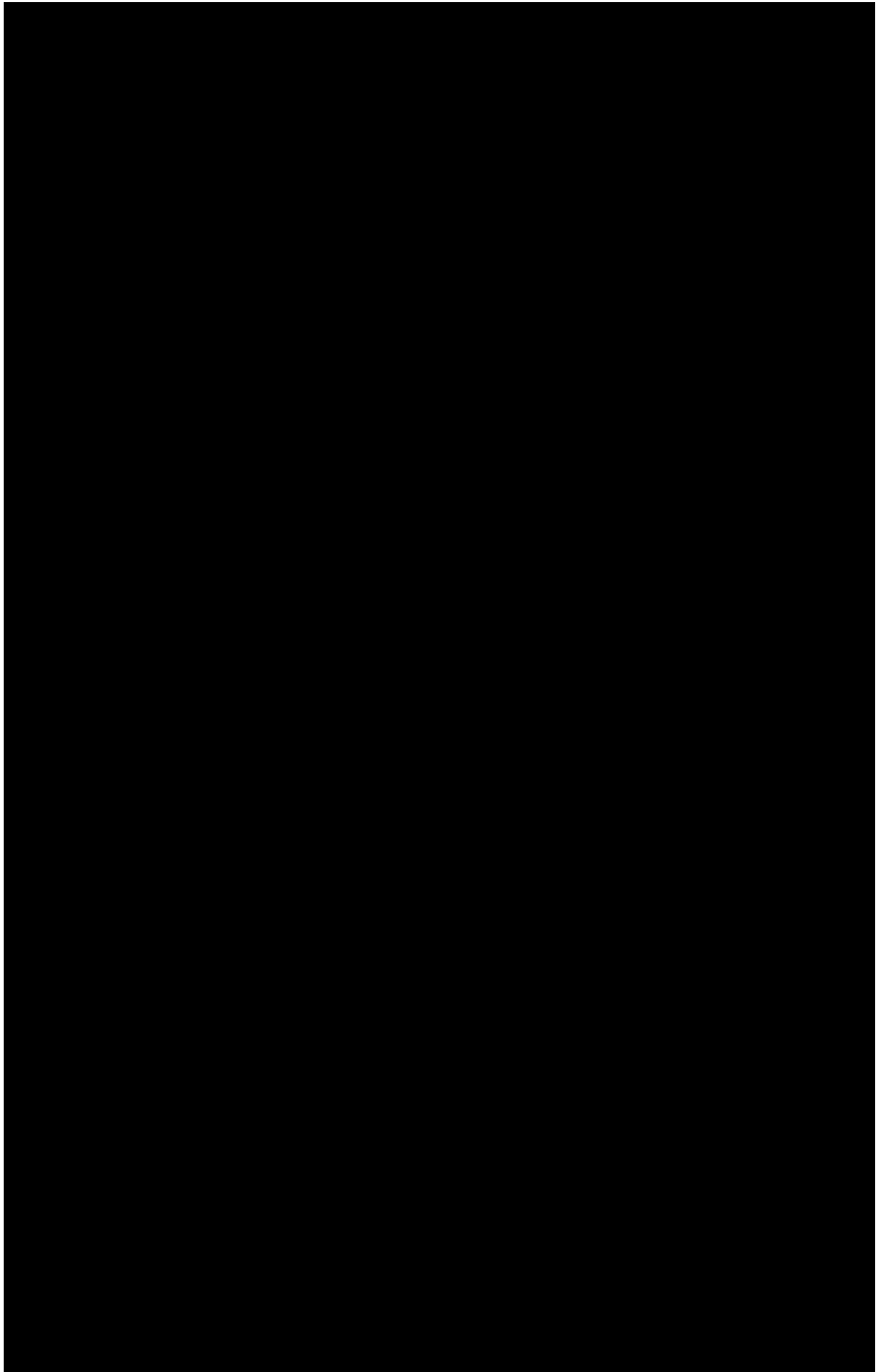
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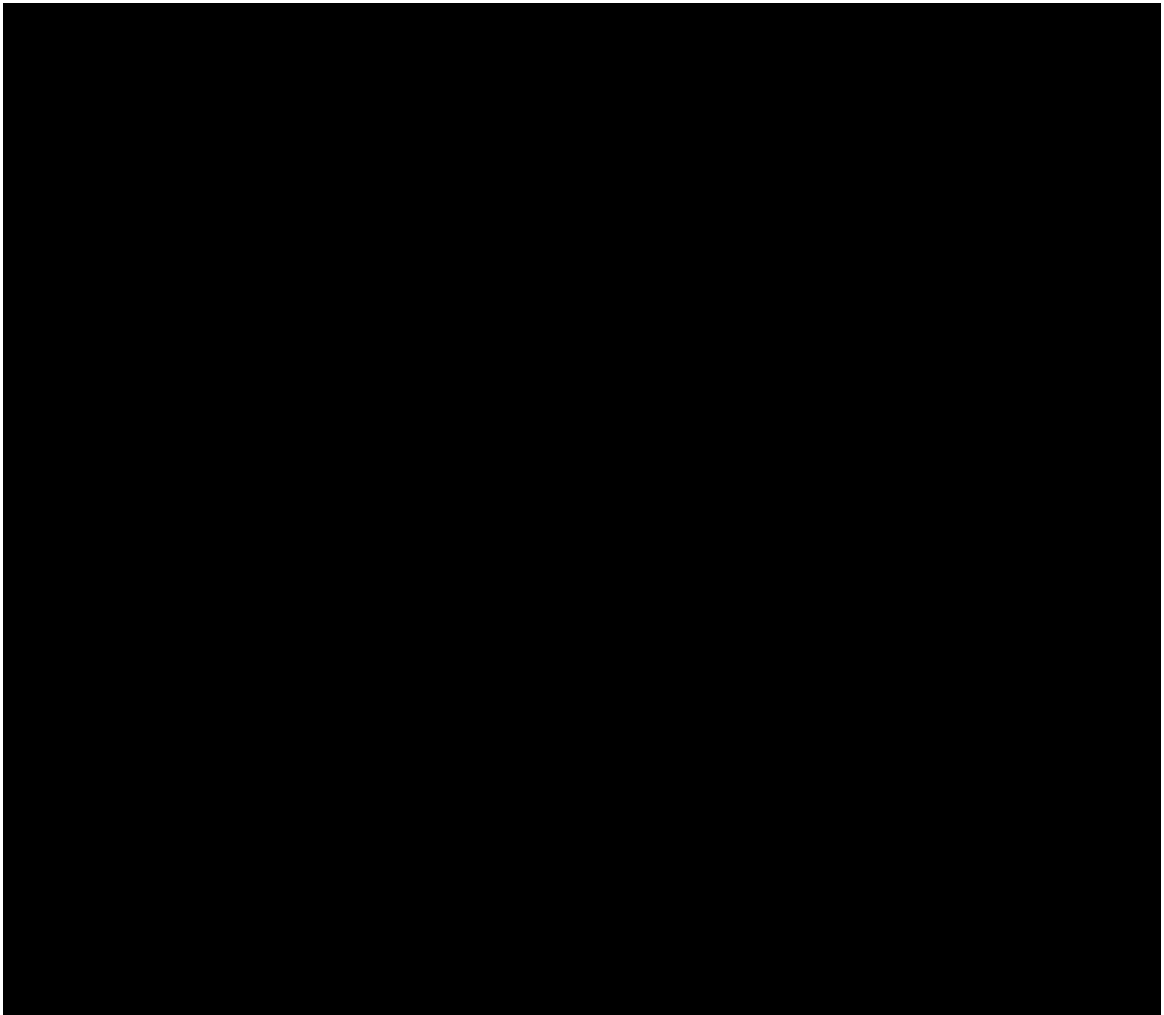
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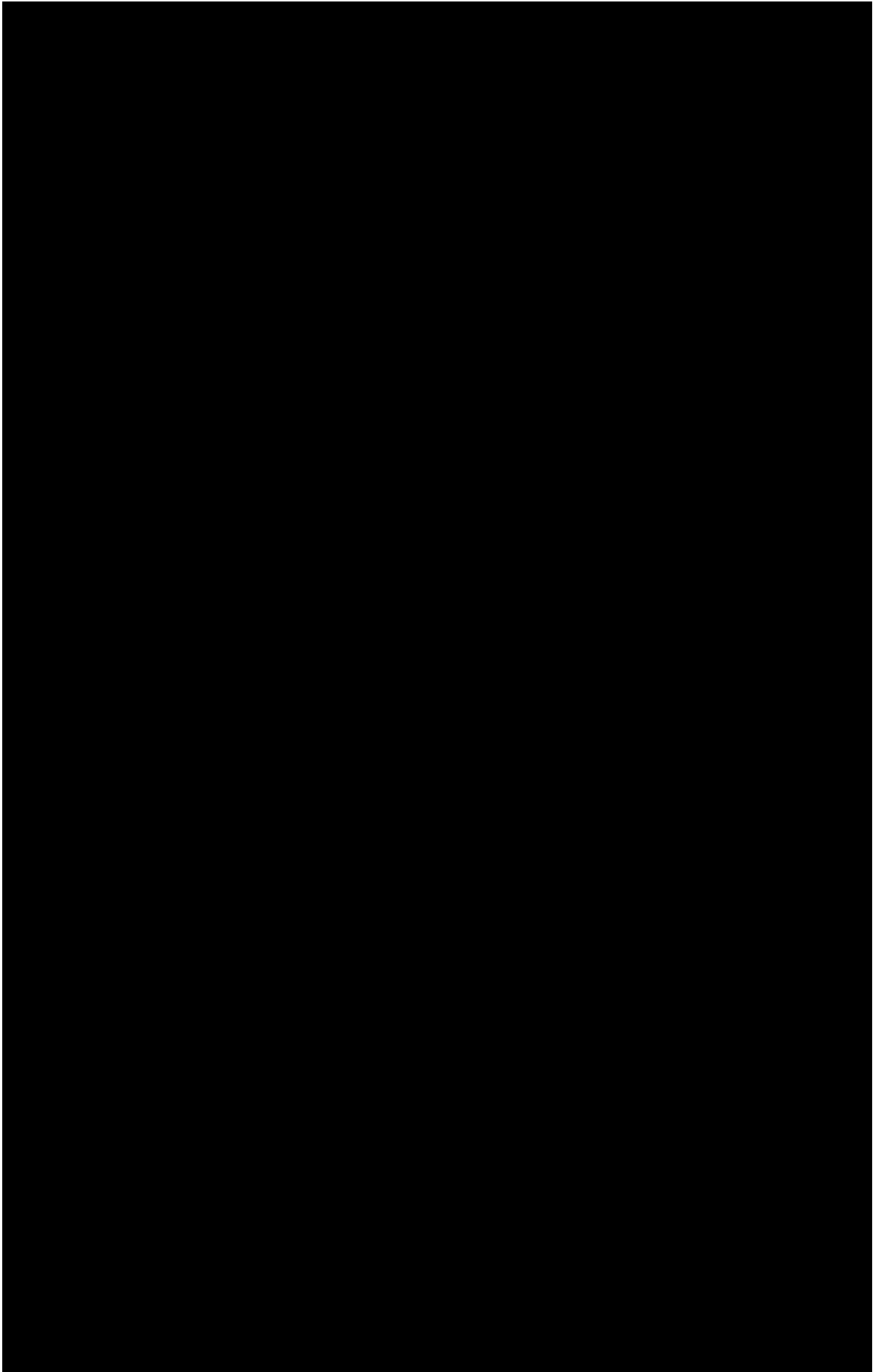
MR. ELSNER: Okay. Can we see 295.

(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 35, for identification,
as of 01/24/2019.)

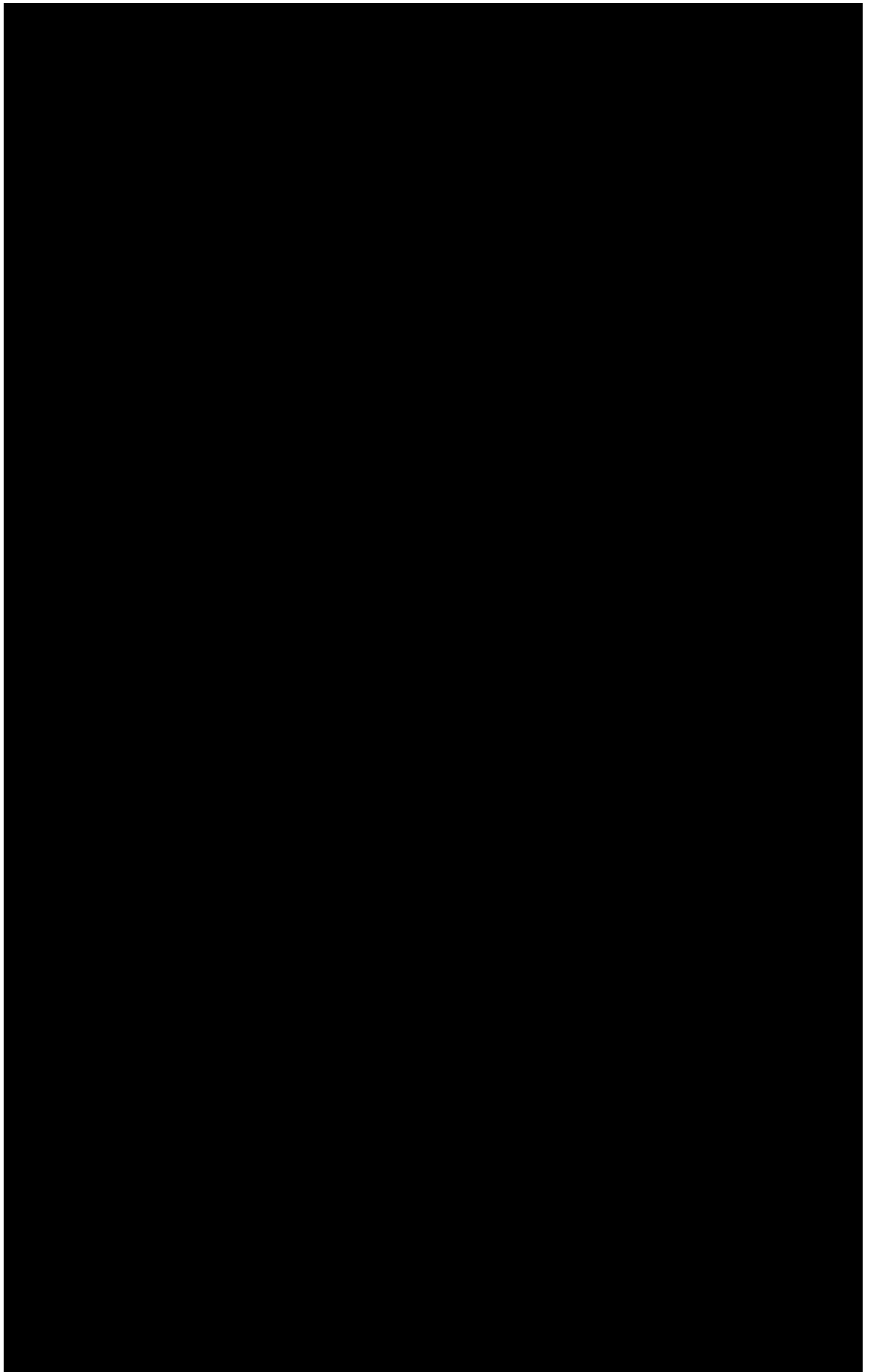
BY MR. ELSNER:



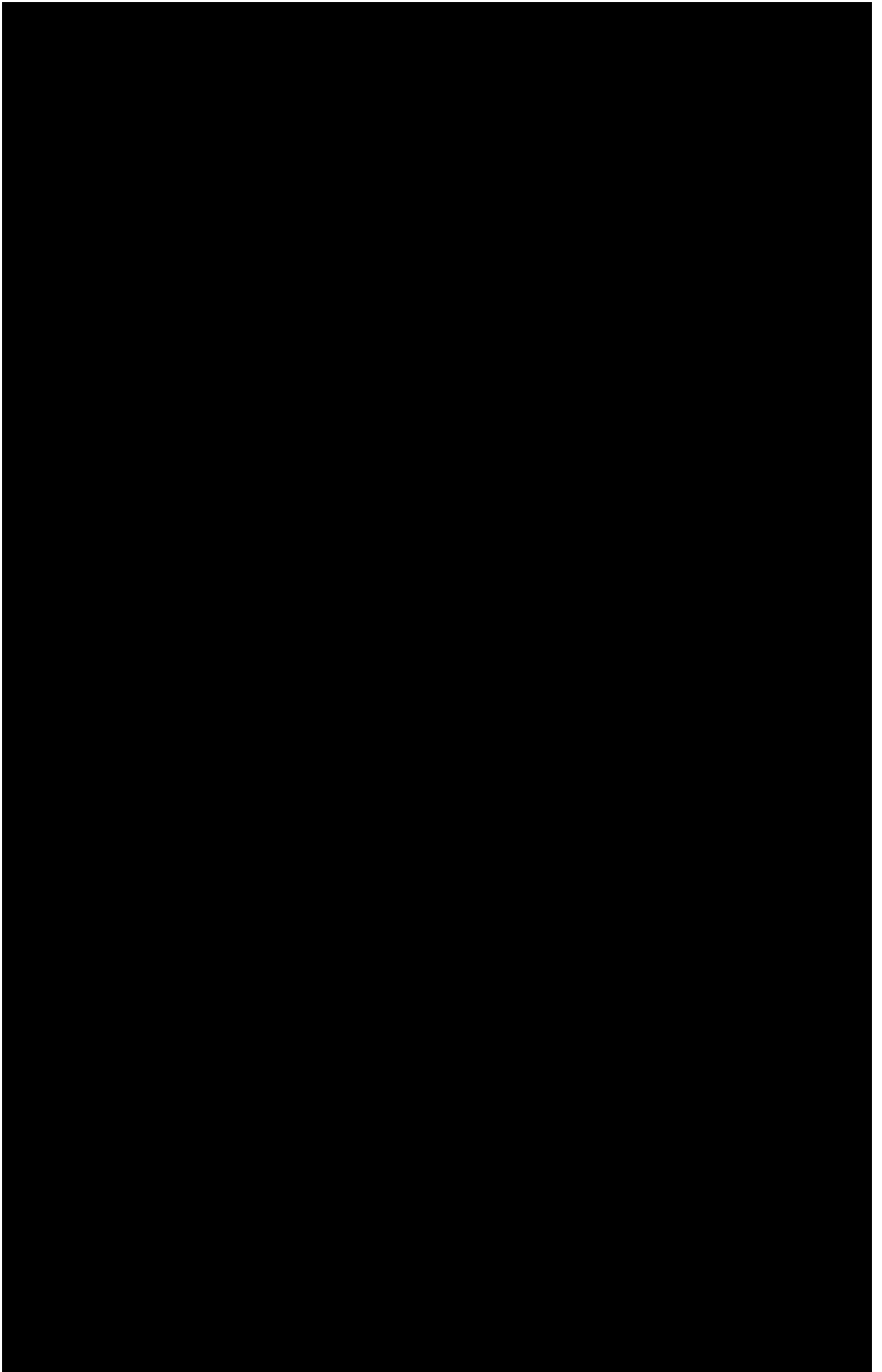
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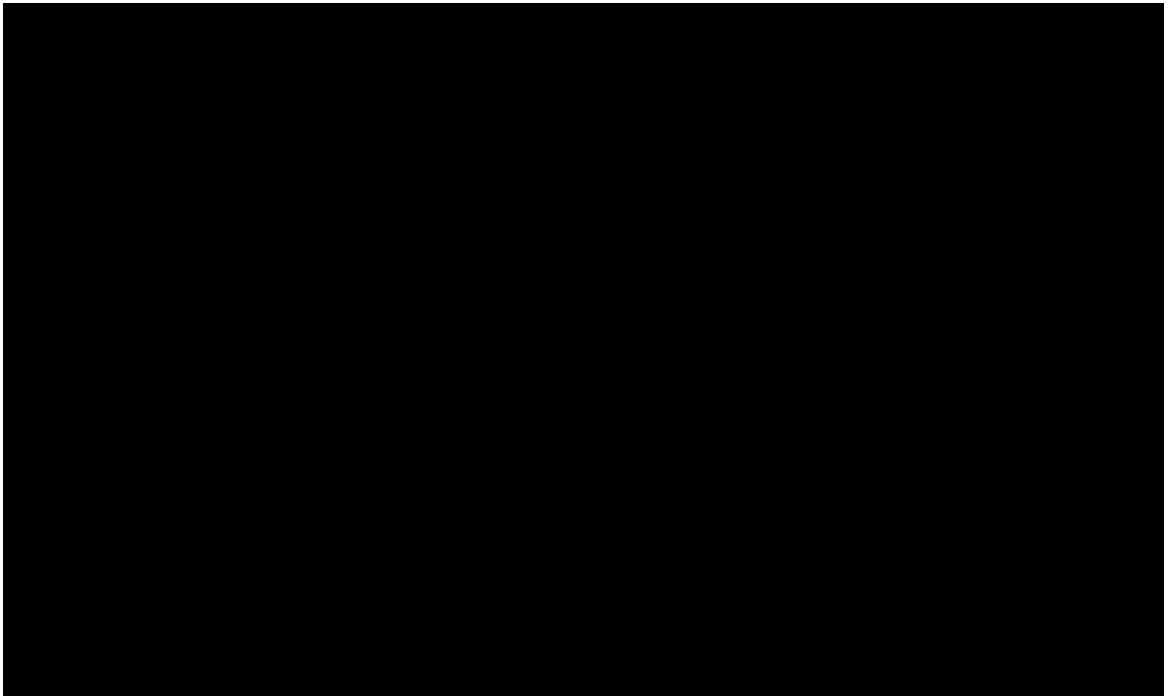
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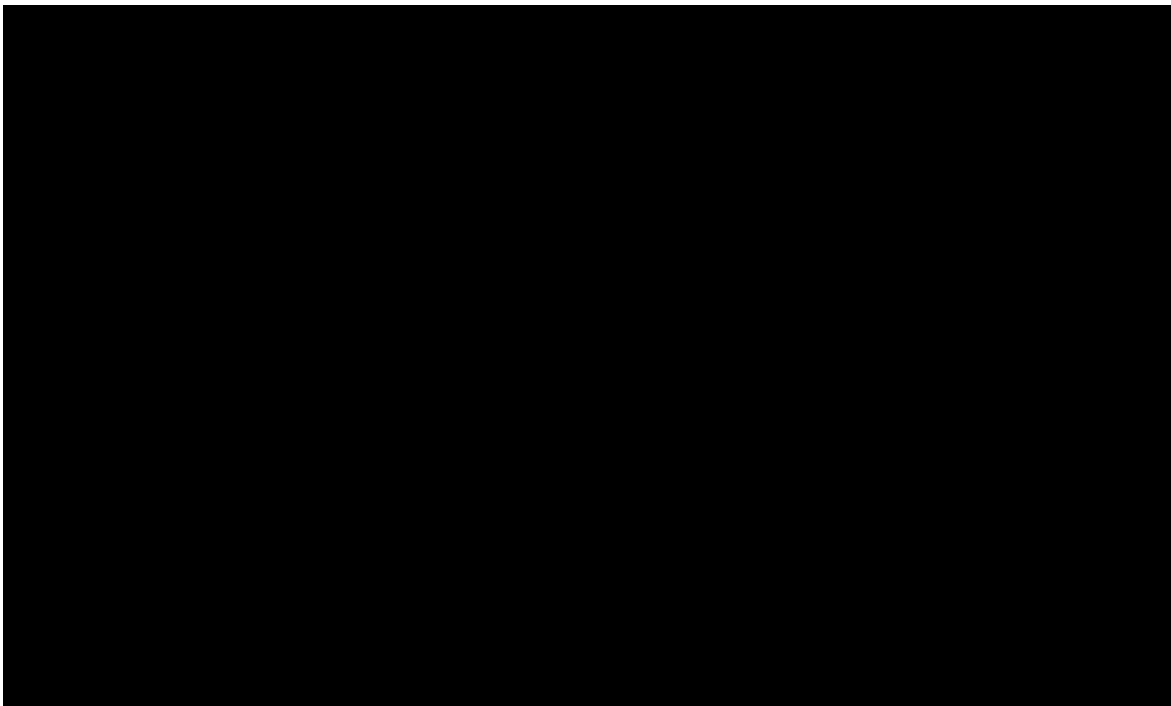


10 (WHEREUPON, a certain document was
11 marked CVS - Elsner Deposition
12 Exhibit No. 36, for identification,
13 as of 01/24/2019.)

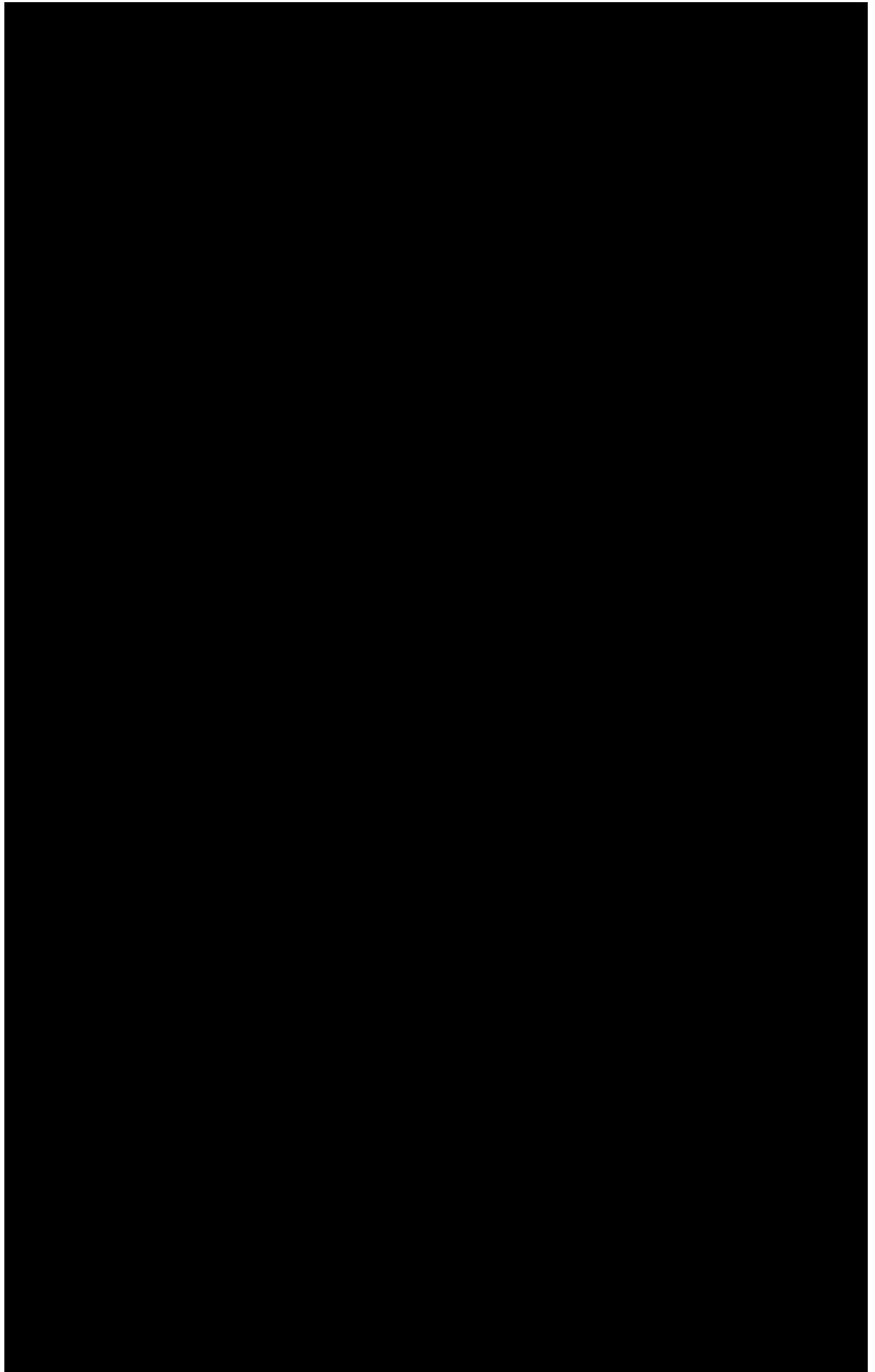
14 BY MR. ELSNER:

15 Q. This is Exhibit 36.

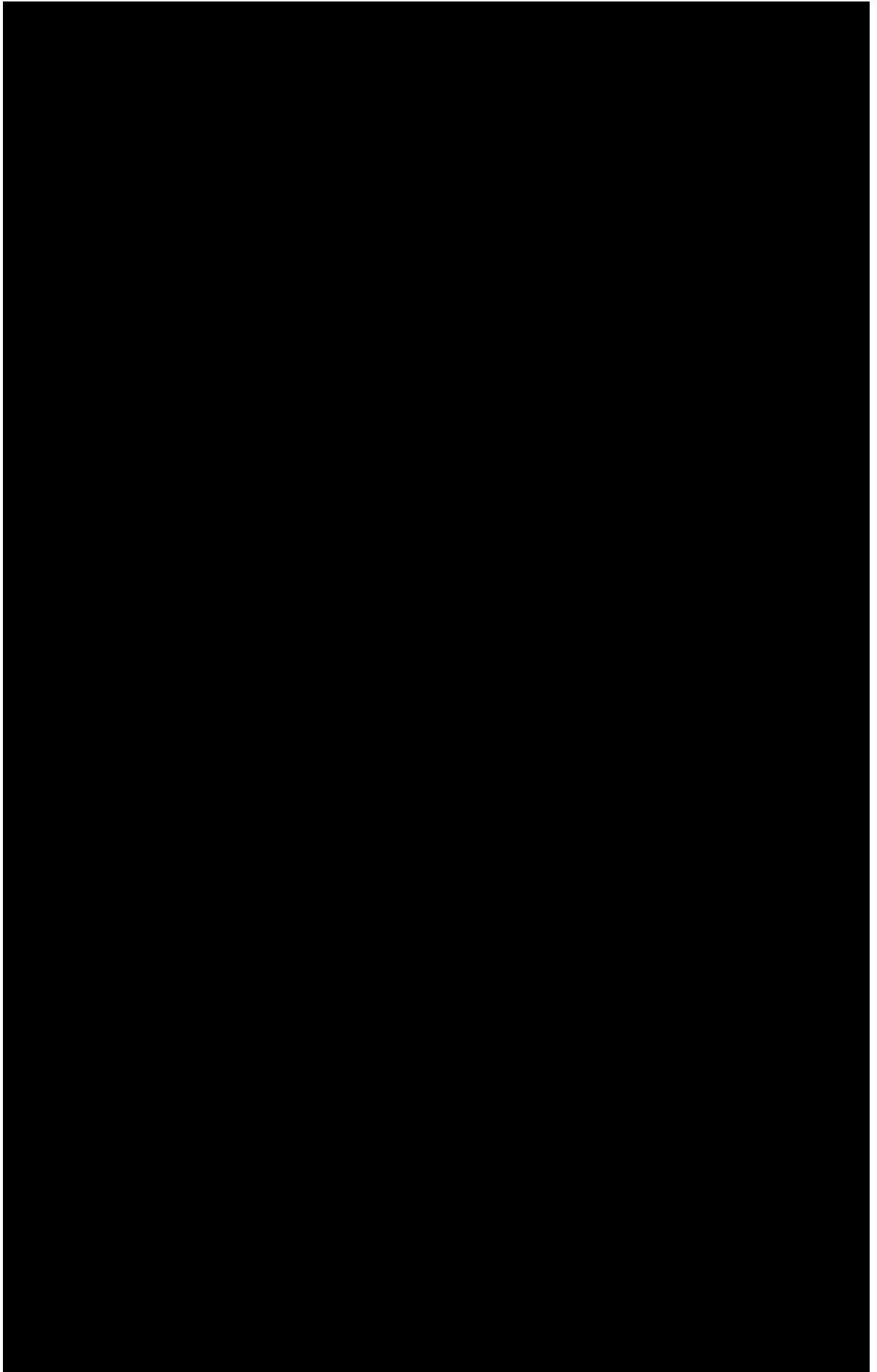
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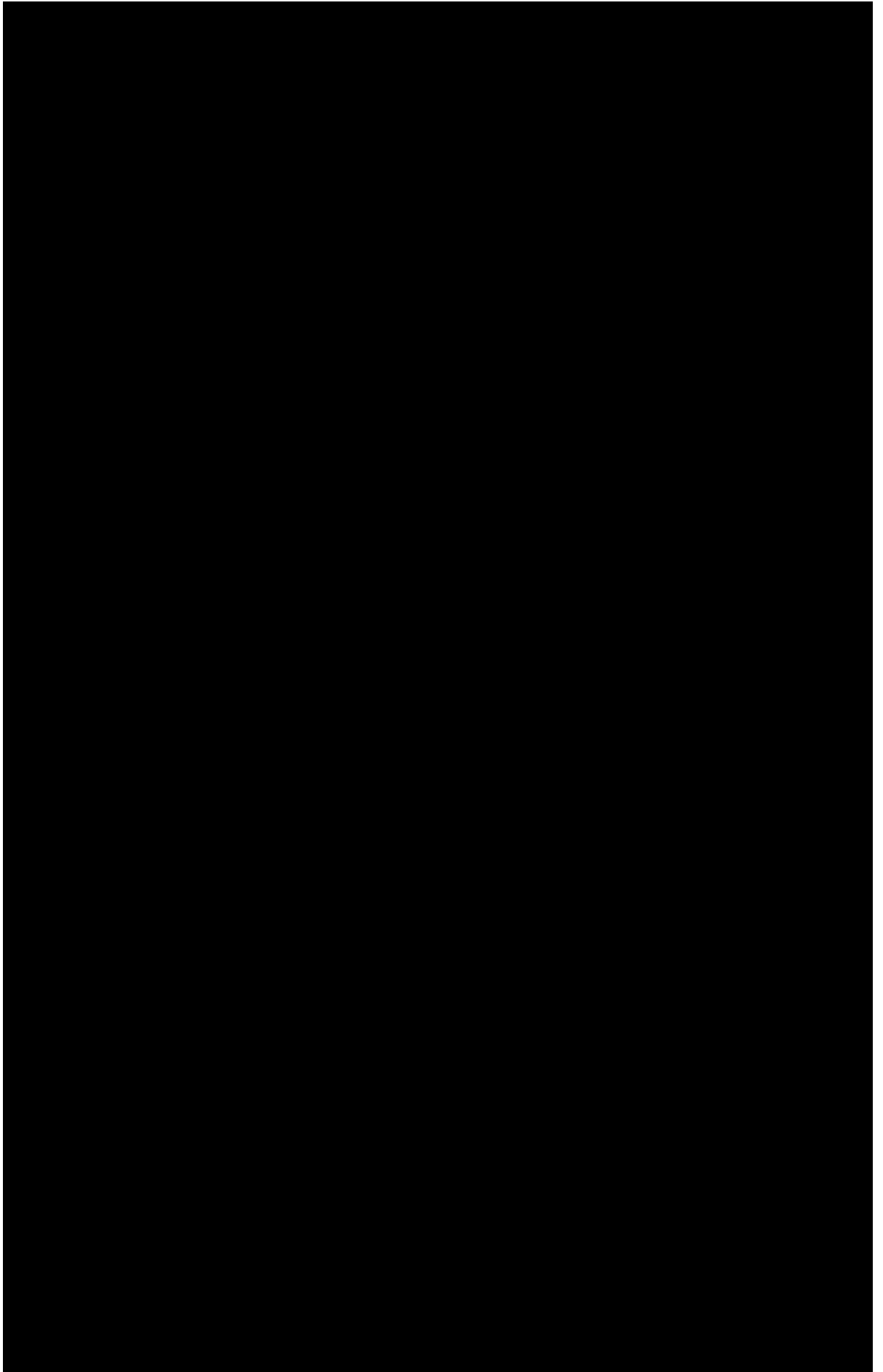
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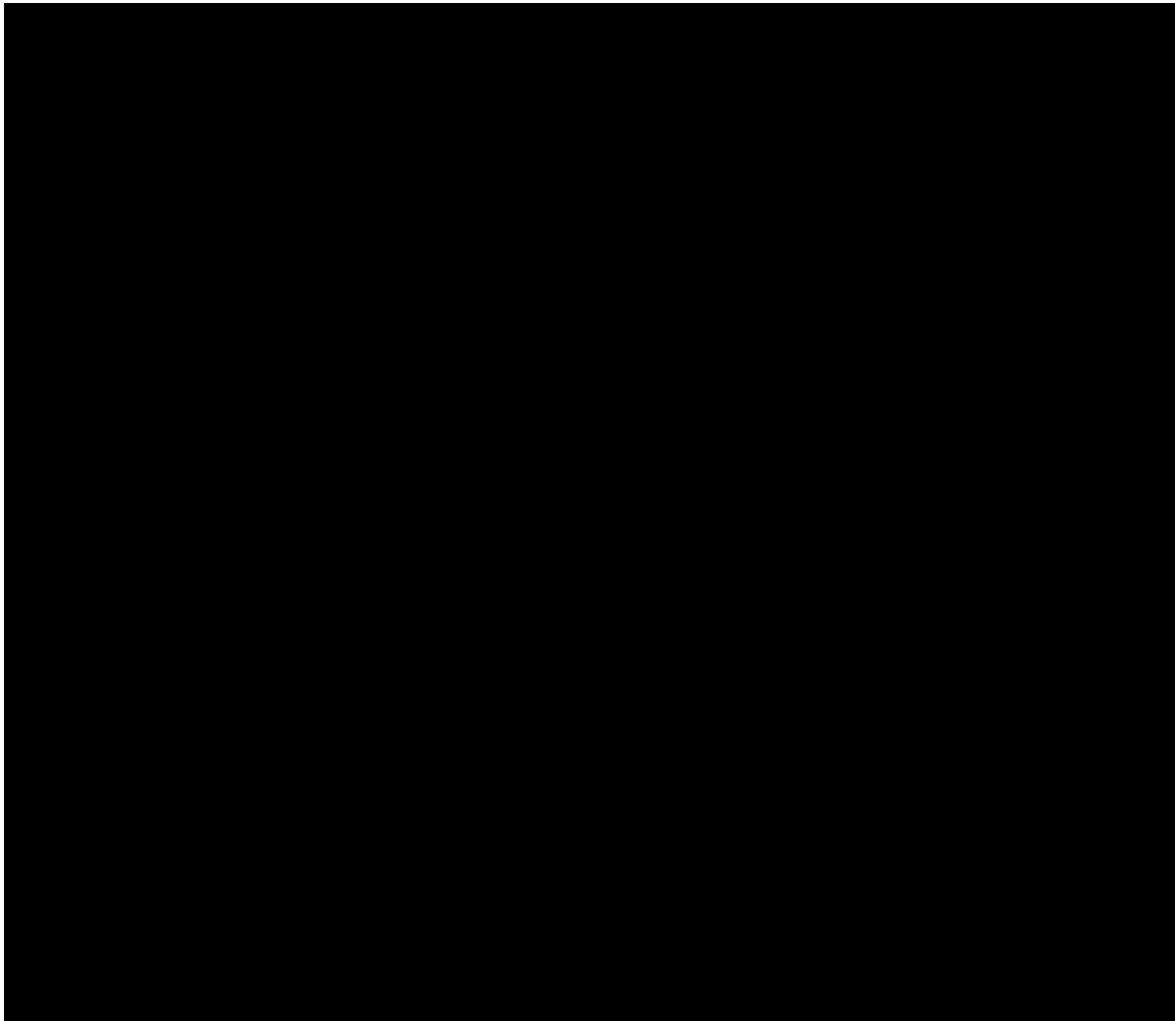


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(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 37, for identification,
as of 01/24/2019.)

BY MR. ELSNER:



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10 Q. So you needed to be here to be with her?

11 A. Yeah.

12 Q. Okay. And --

13 A. I almost brought the picture of the Easter
14 bunny. It is on my refrigerator at home. I forgot
15 to.

16 Q. Oh, it's in your annual review?

17 A. Yeah, I did that. It was my daughter
18 sitting on my lap.

19 Q. Do you have a picture?

20 A. Yeah.

21 Q. Okay.

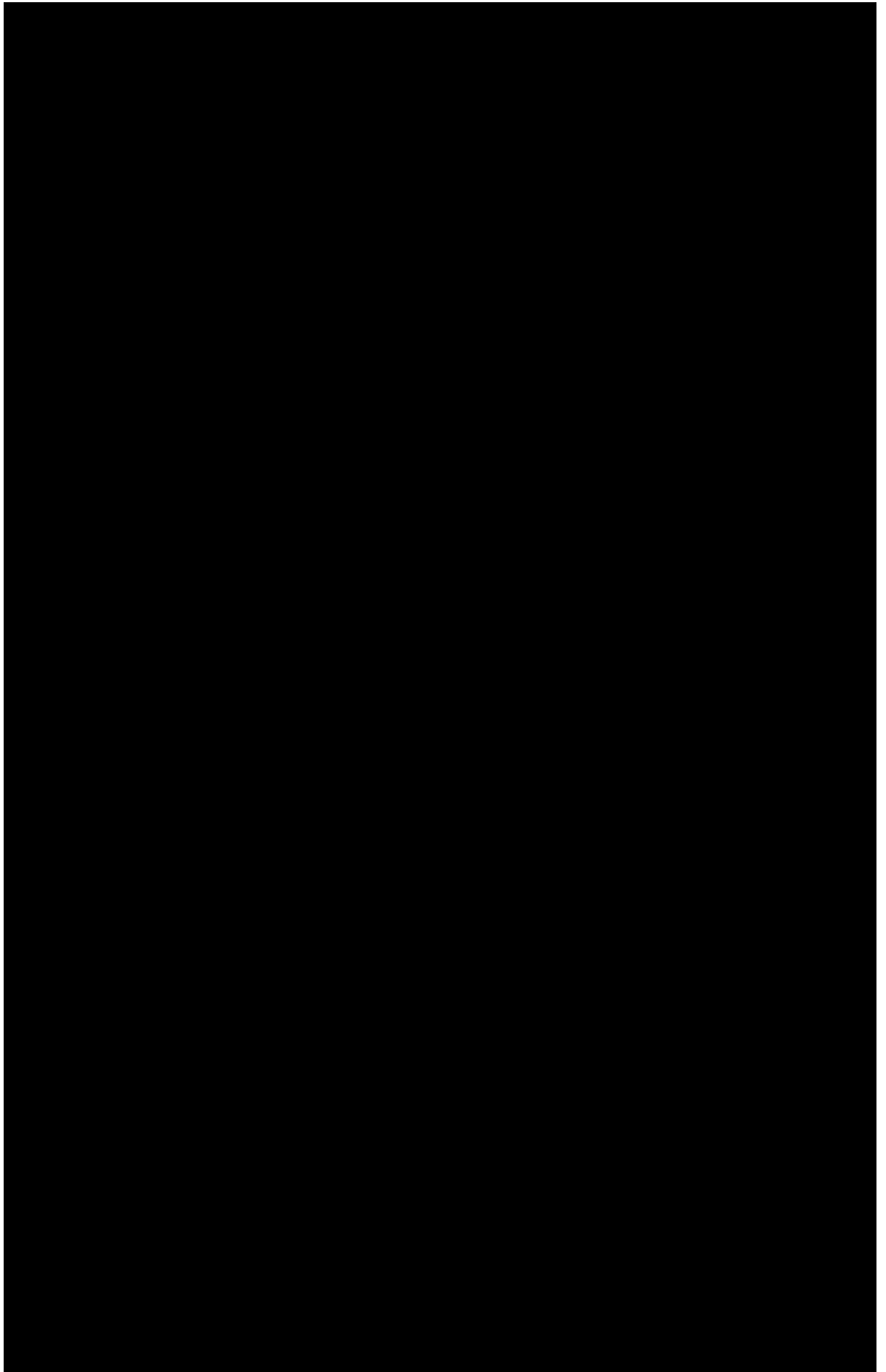
22 A. It's on my refrigerator. I was going to
23 bring it for -- for laughs. But --

24 Q. Okay.

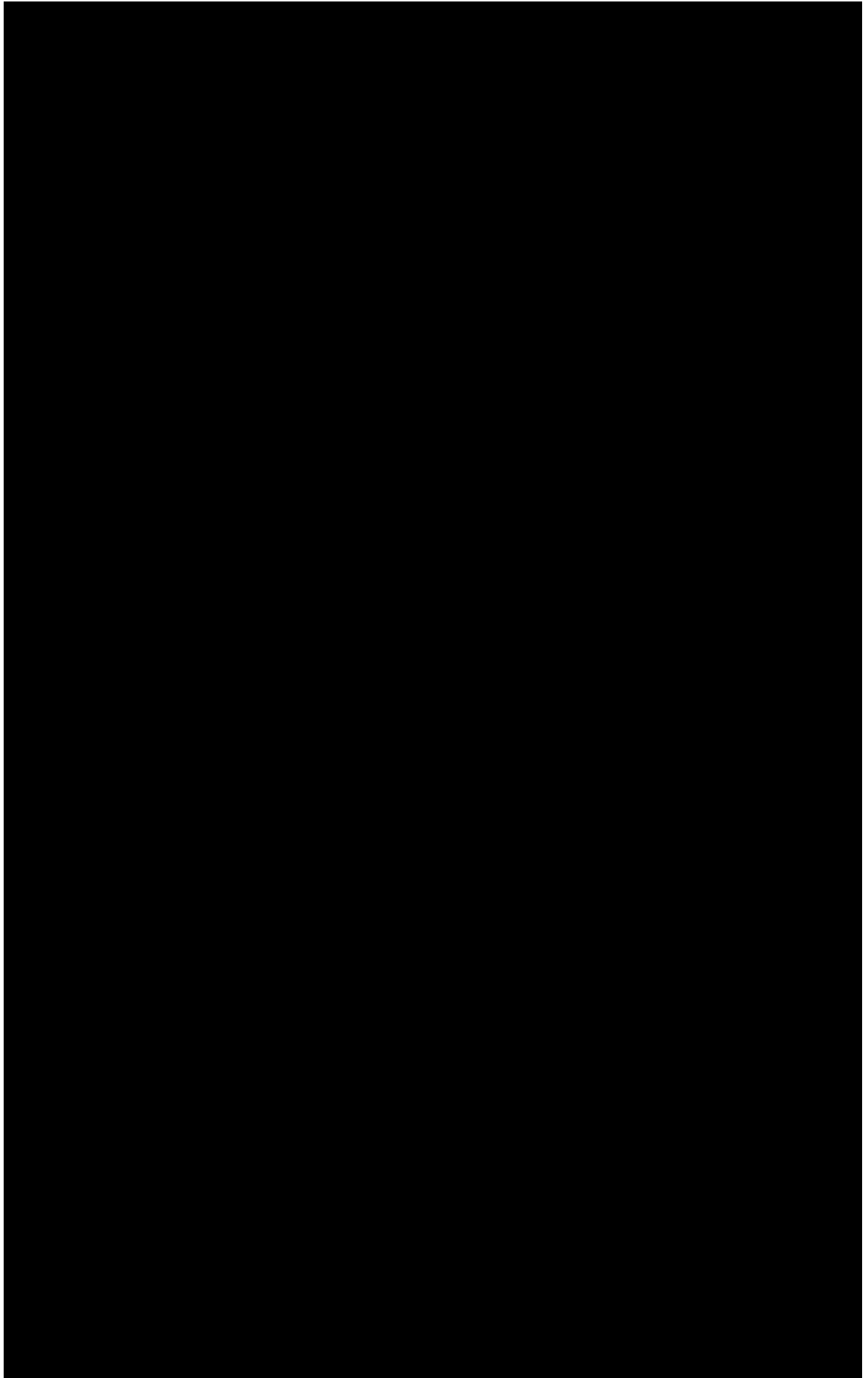
1 A. -- she still hated it. She knew -- she
2 could hear my voice but she screamed the whole time.

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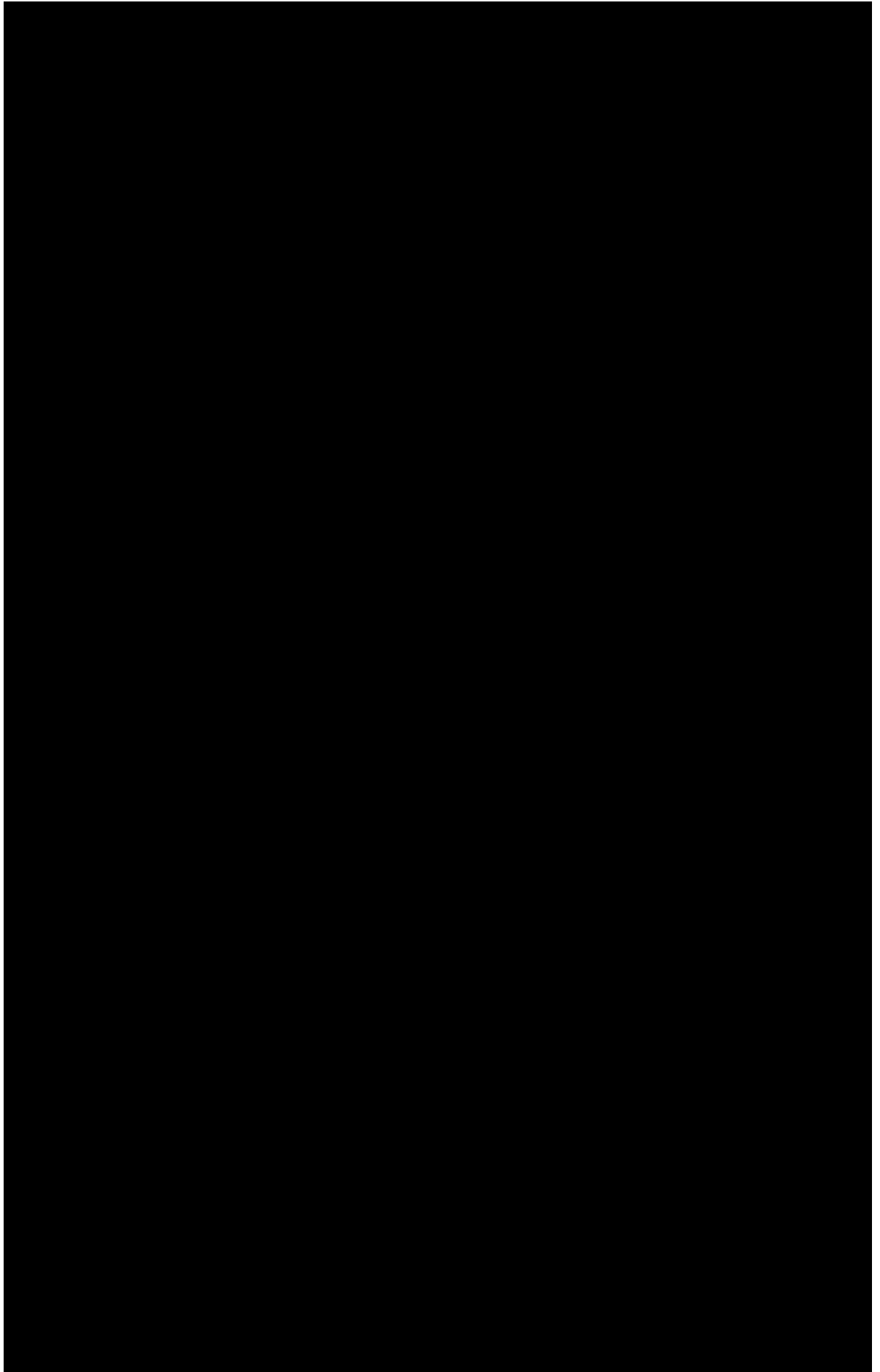
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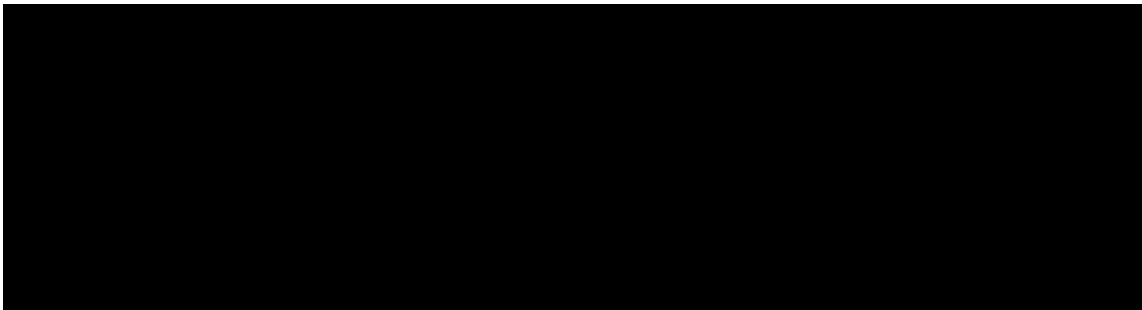
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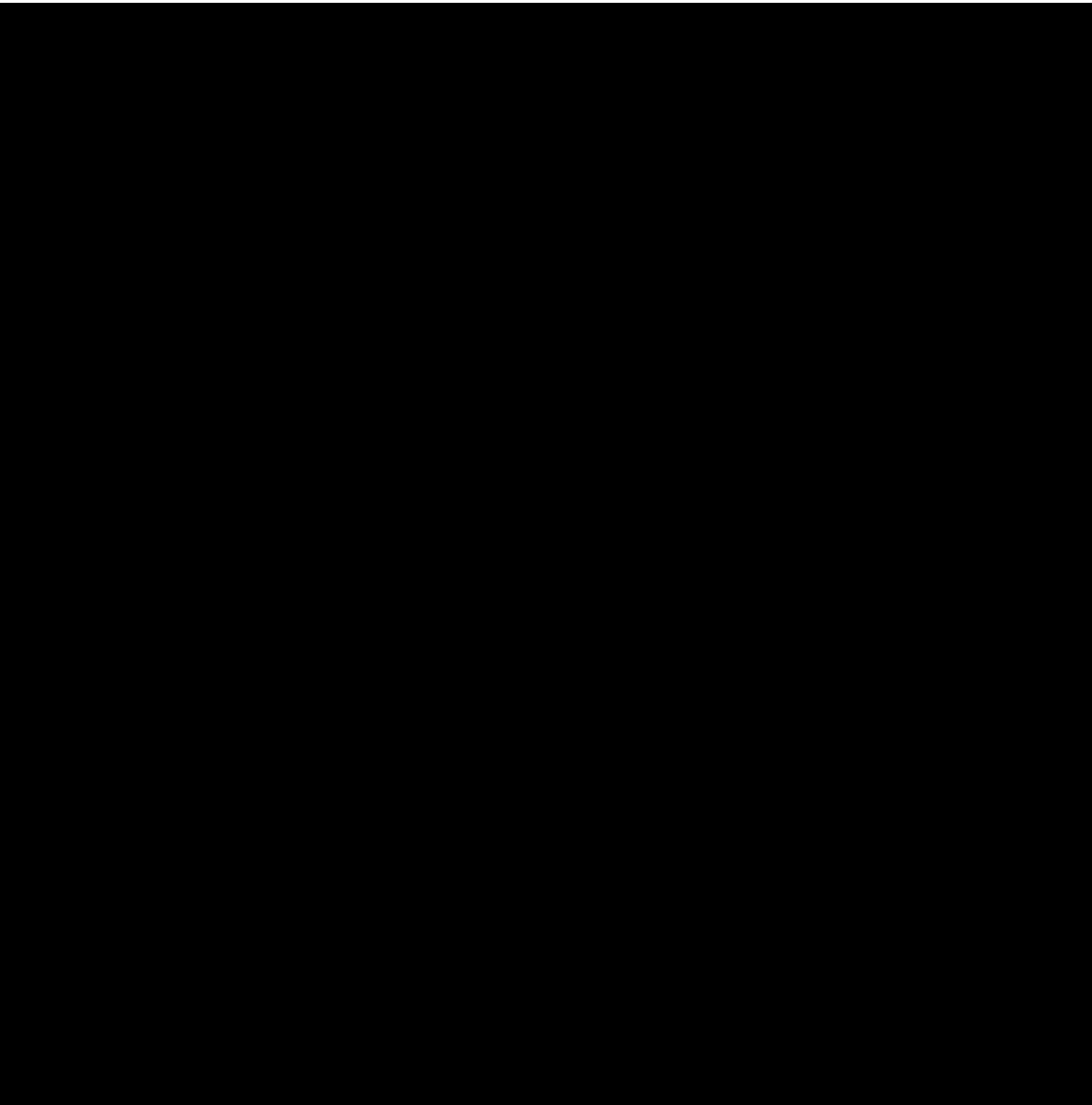


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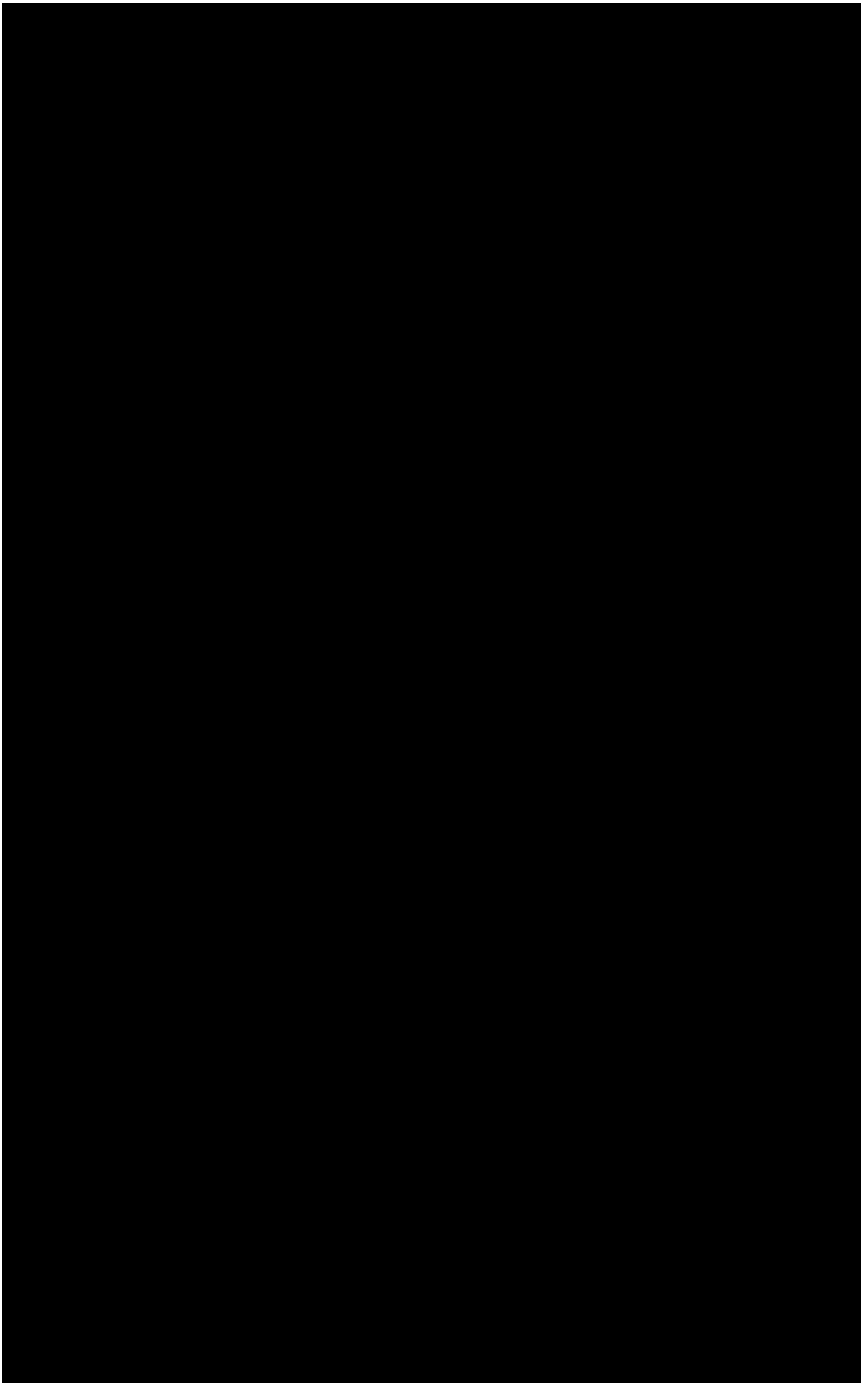


(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 38, for identification,
as of 01/24/2019.)

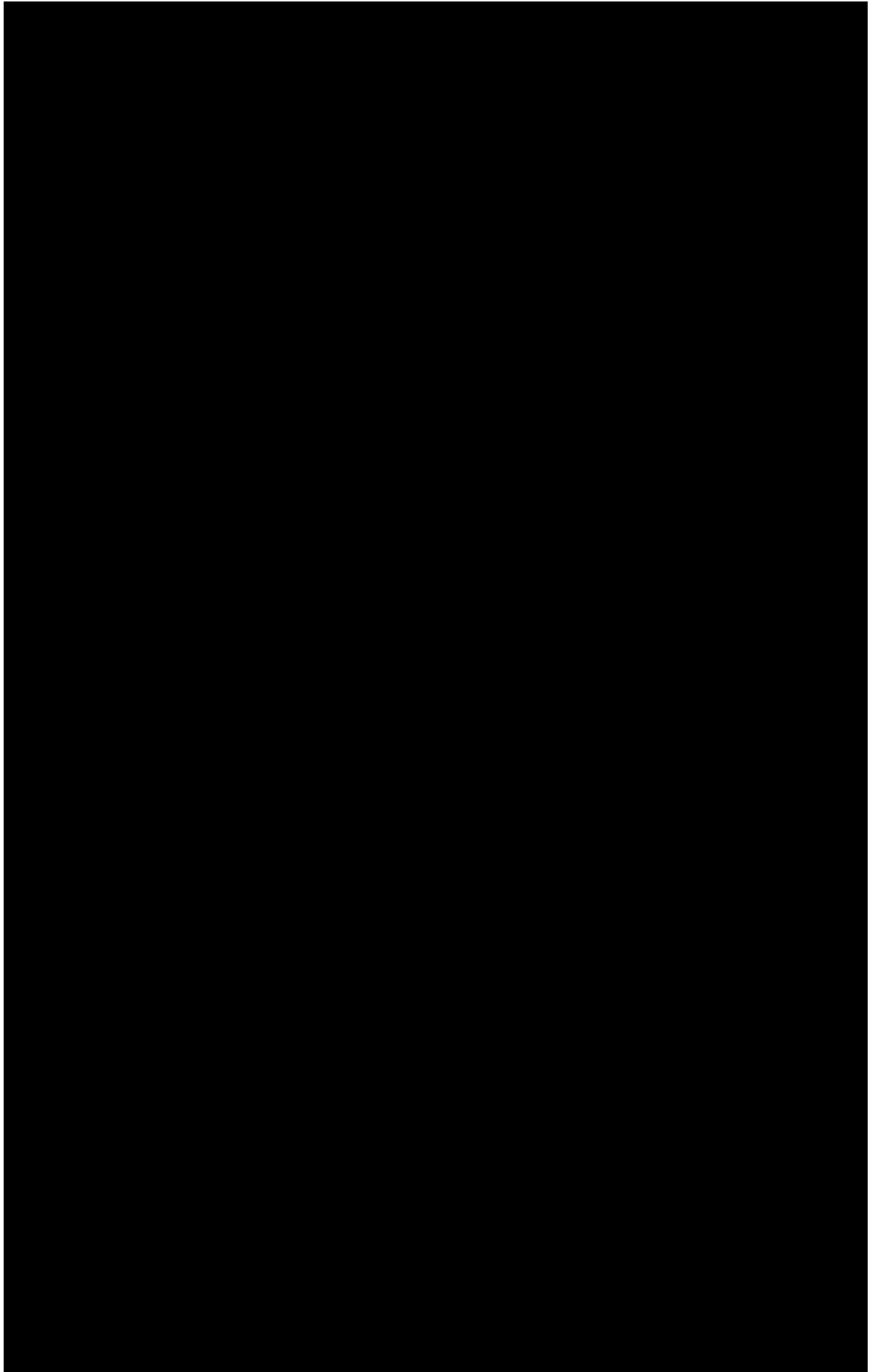
BY MR. ELSNER:



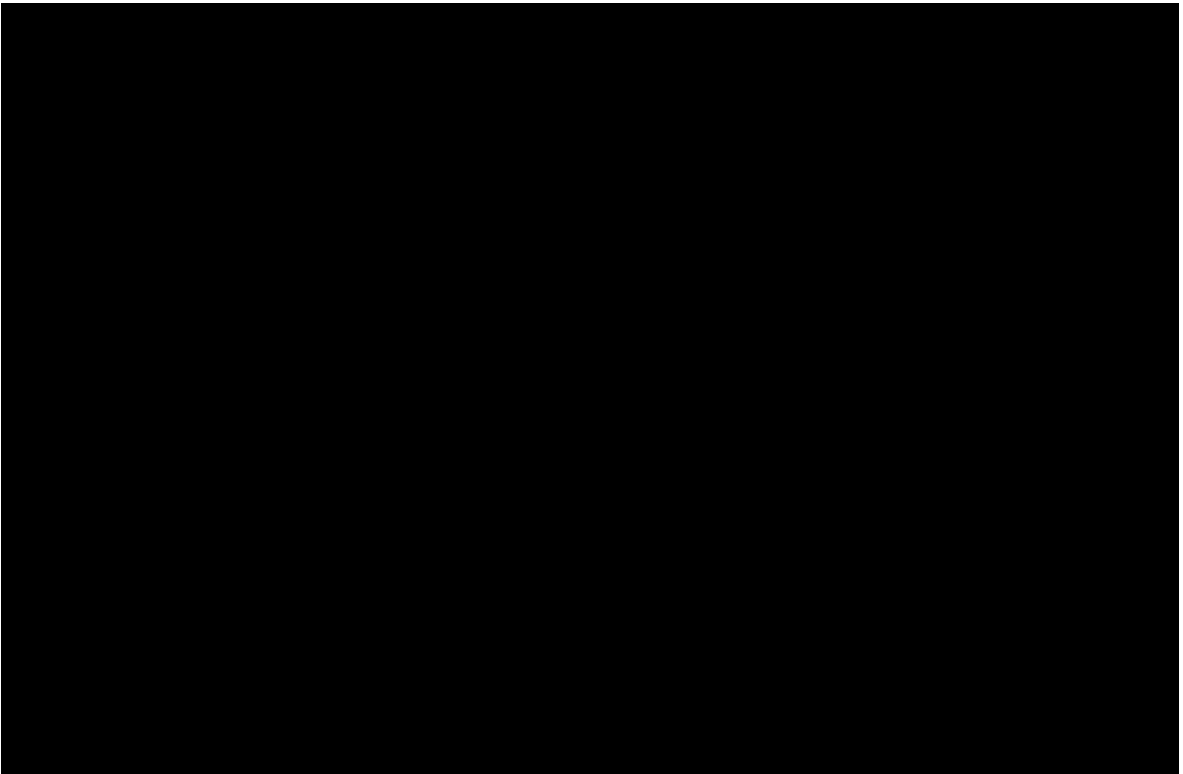
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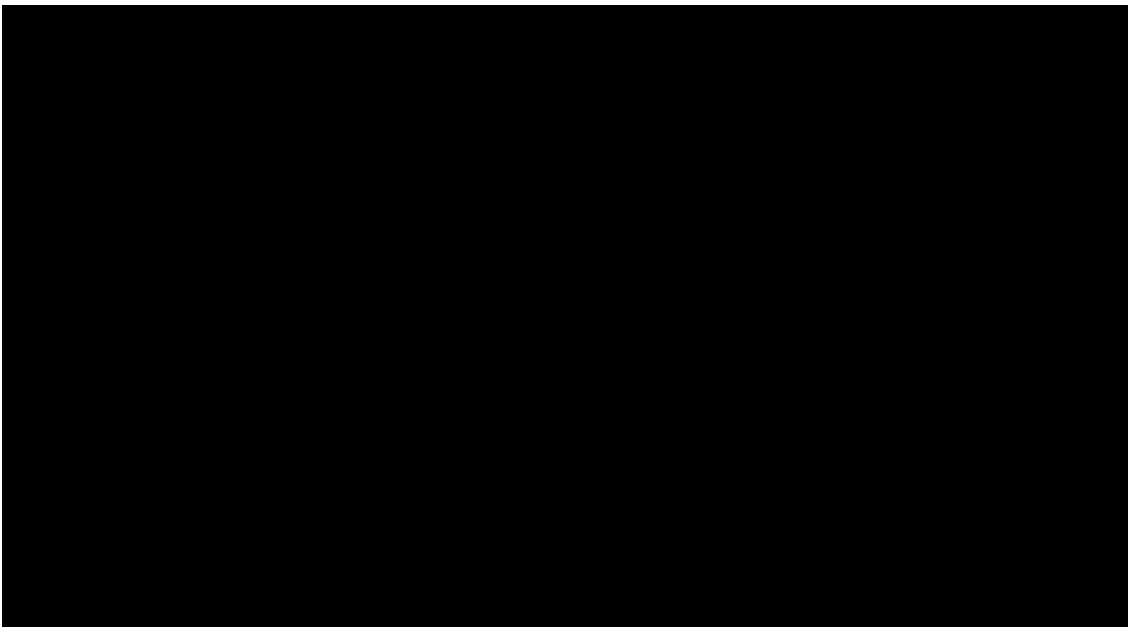
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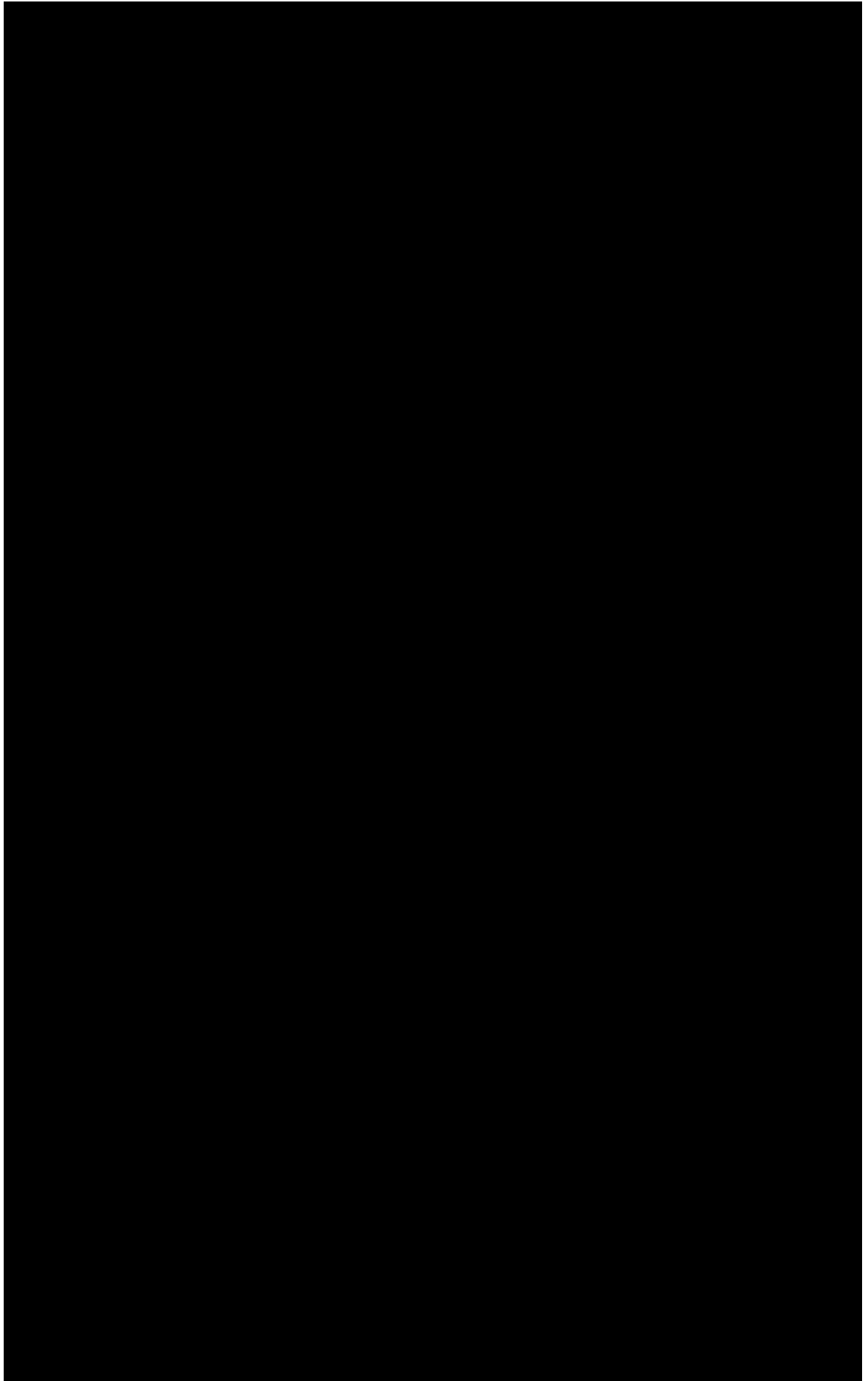
MR. ELSNER: Can we -- can we see 281.

(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 39, for identification,
as of 01/24/2019.)

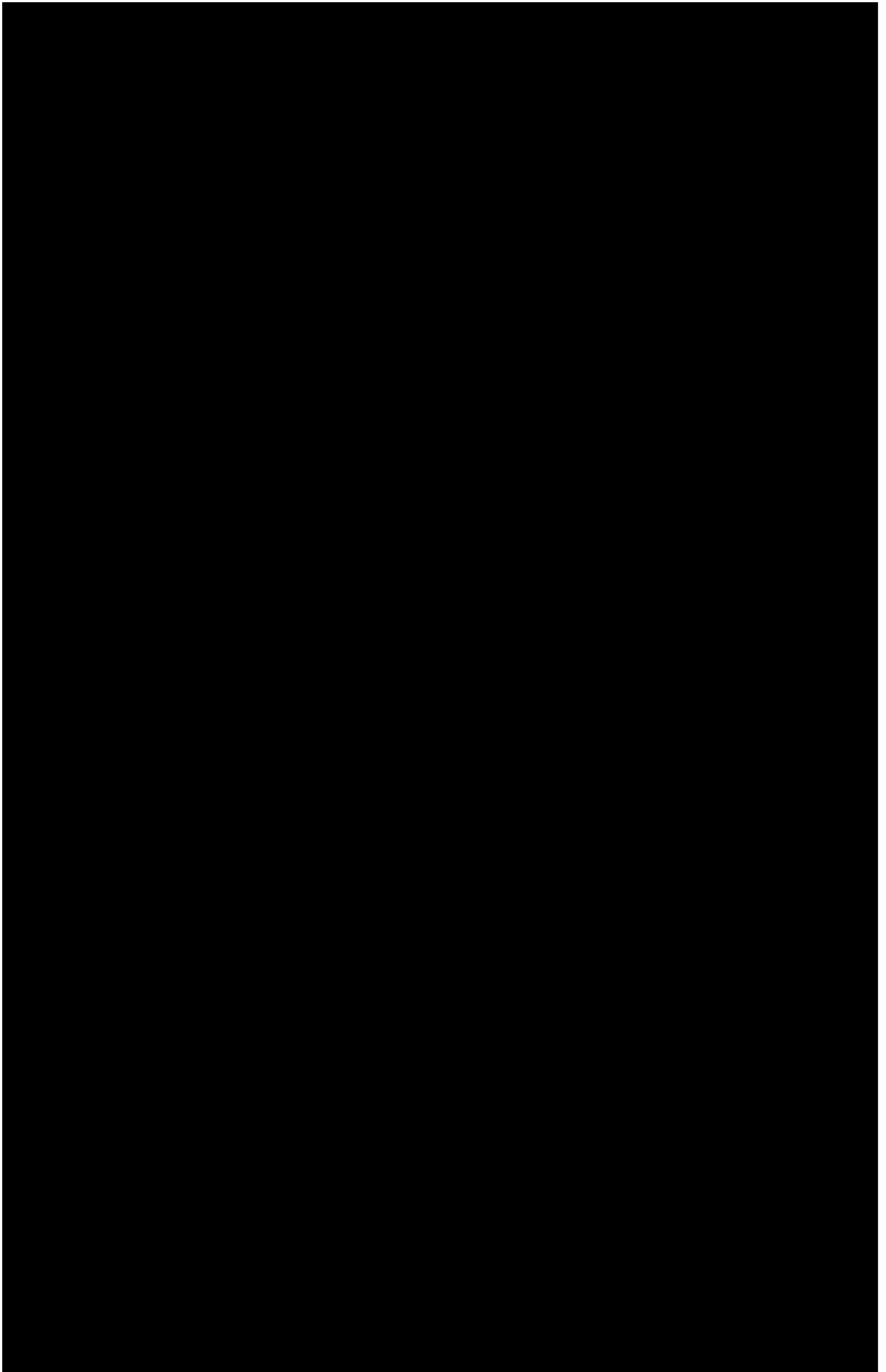
BY MR. ELSNER:



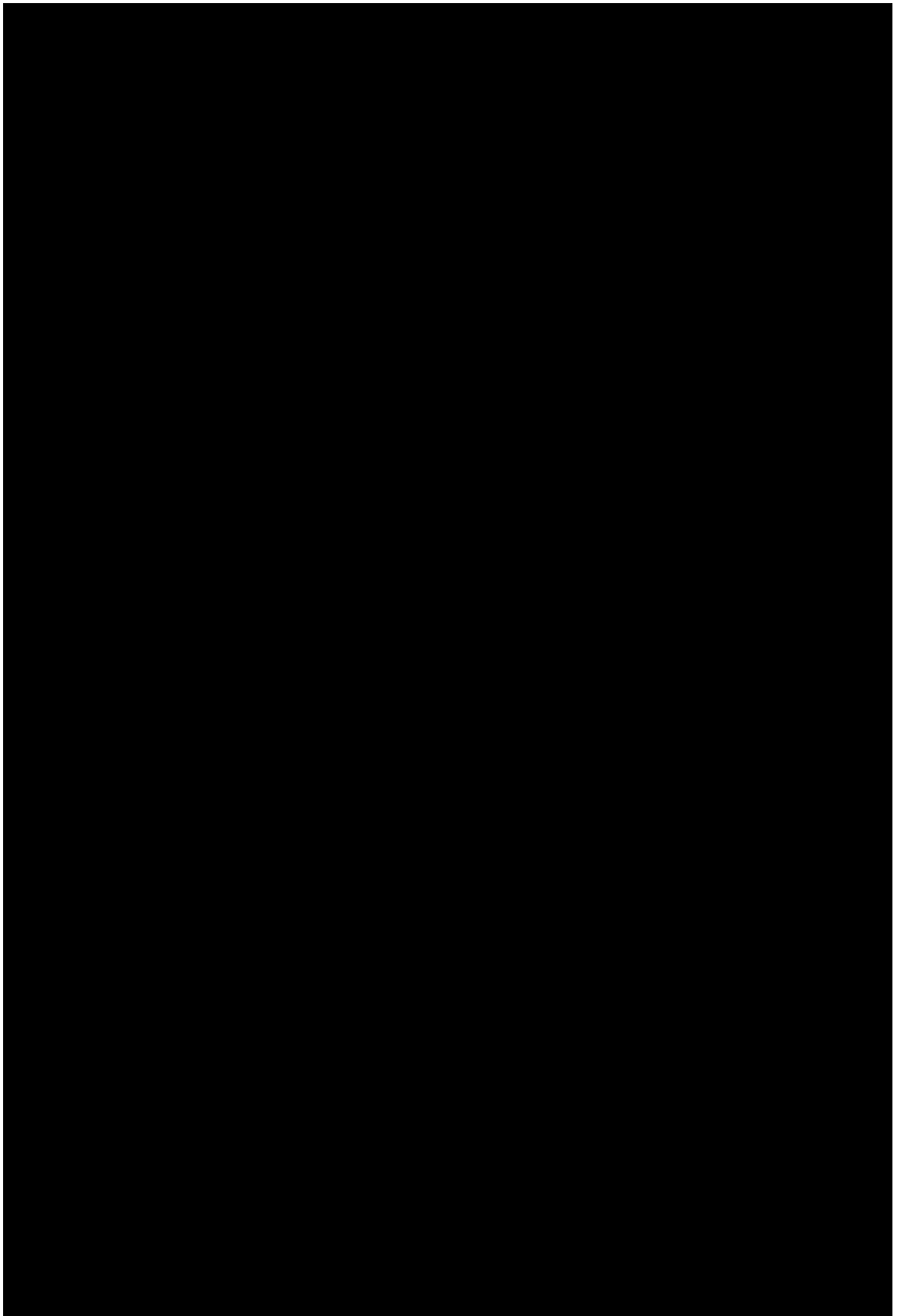
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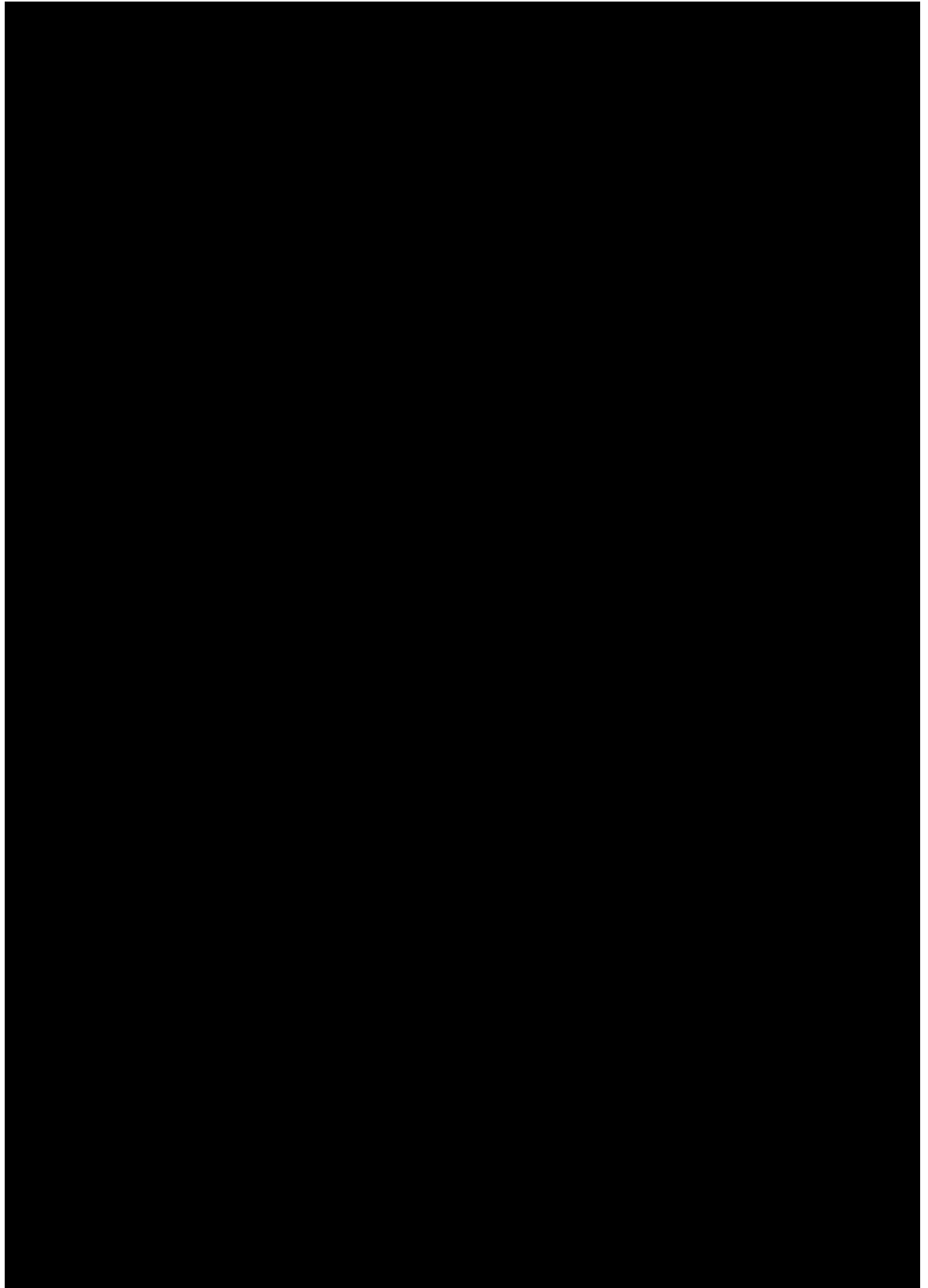


23 (WHEREUPON, a certain document was
24 marked CVS - Elsner Deposition

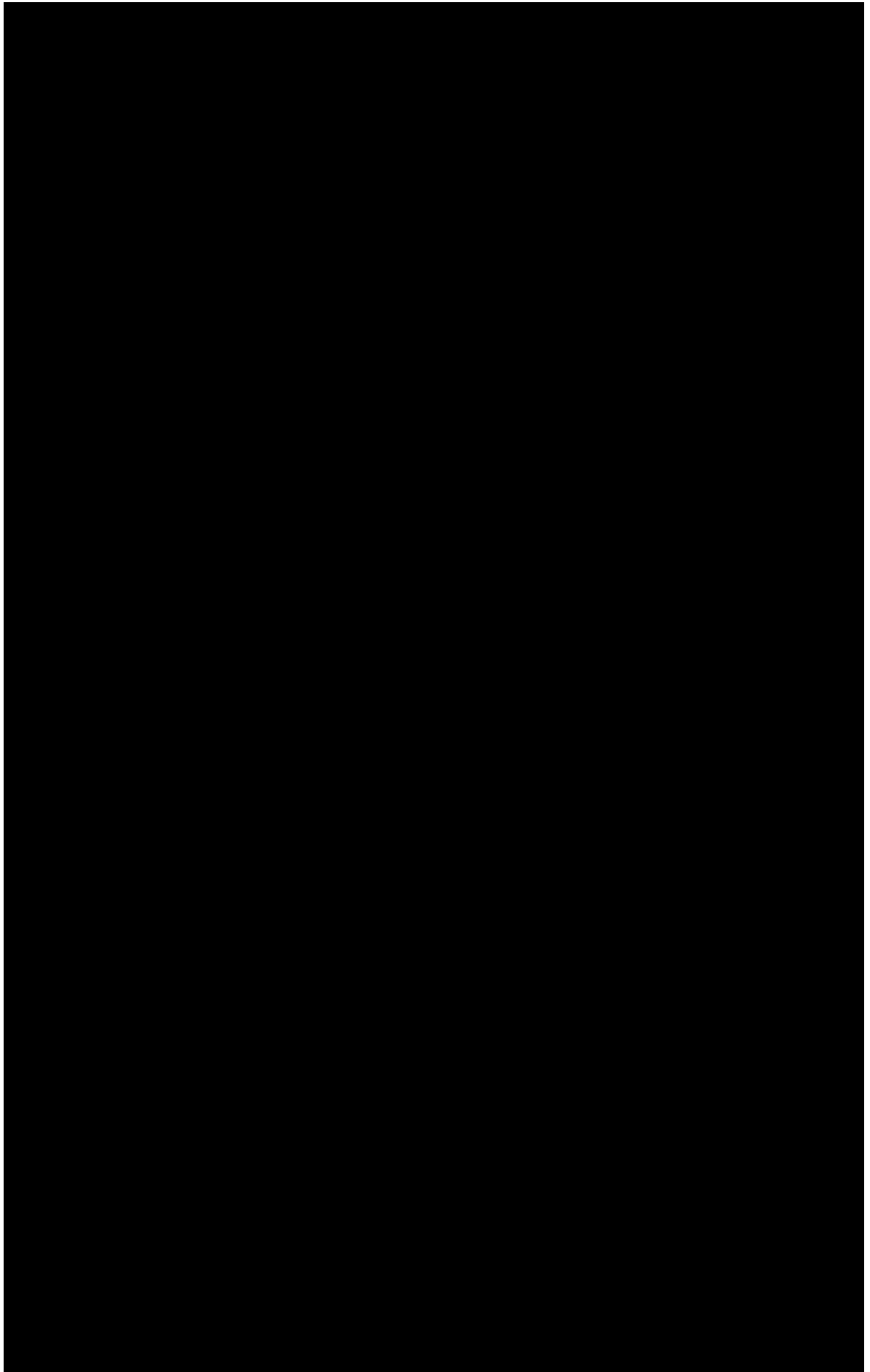
1 Exhibit No. 40, for identification,
2 as of 01/24/2019.)

3 BY MR. ELSNER:

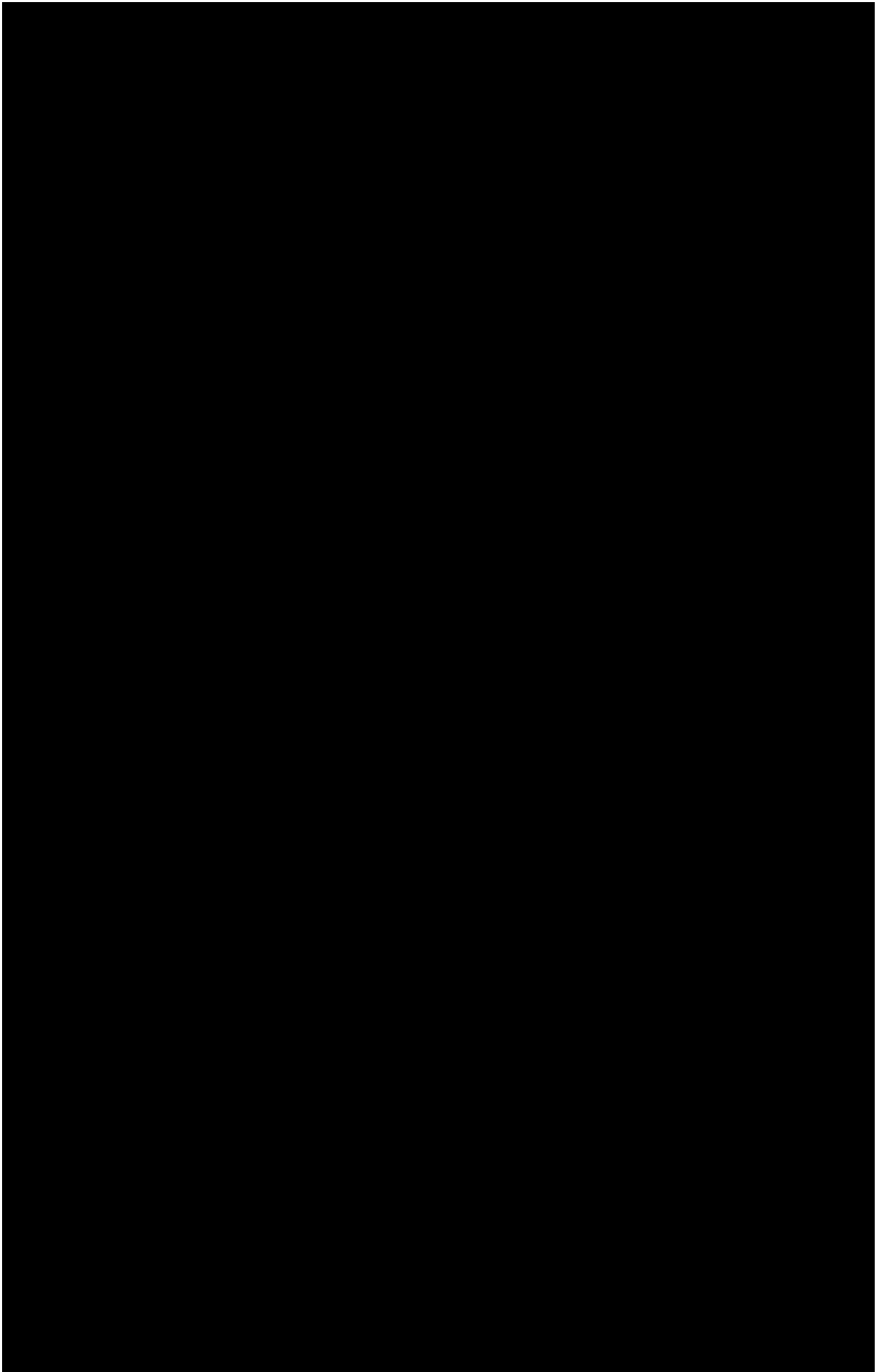
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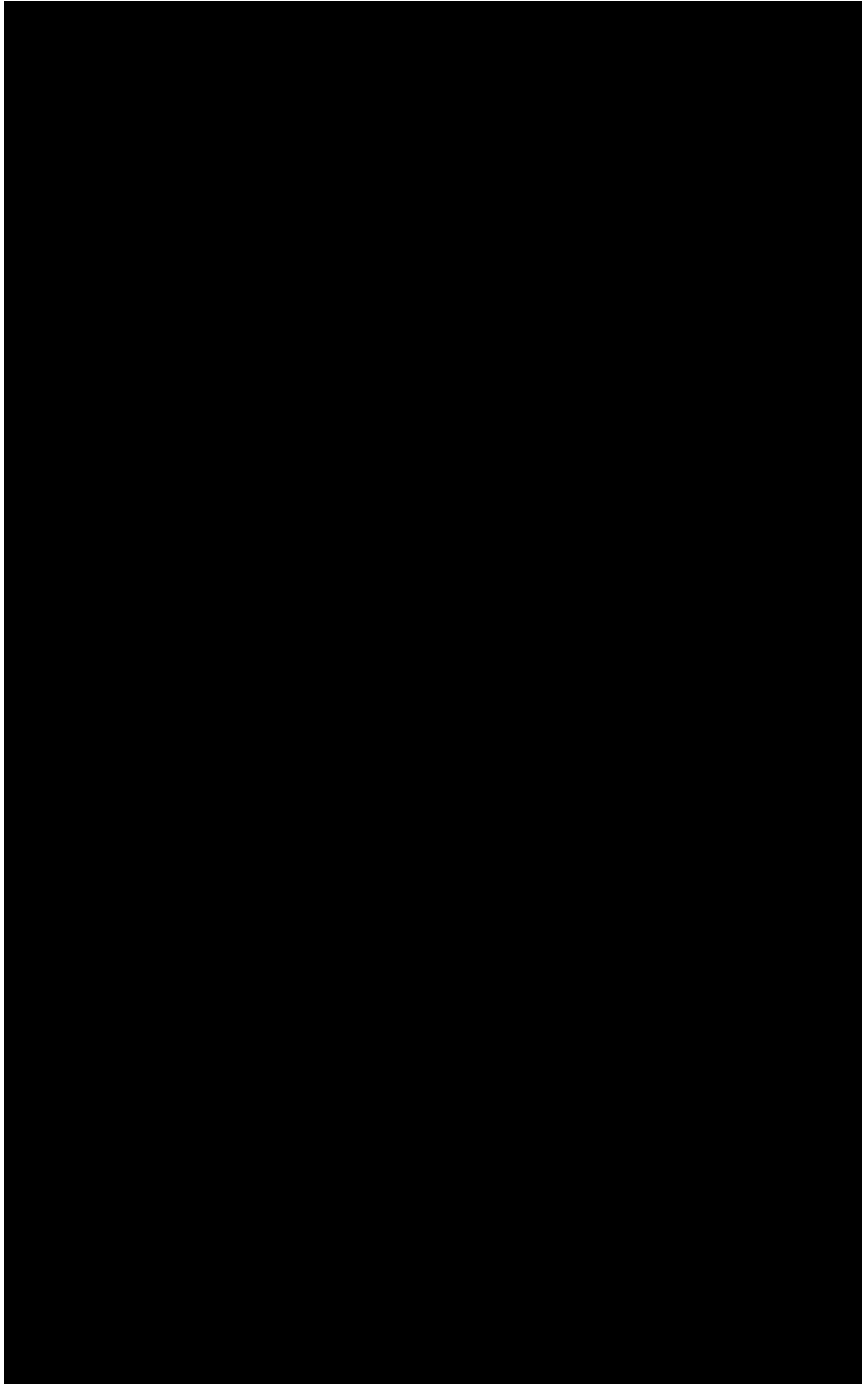
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8 BY MR. ELSNER:

9 Q. Okay.

10 MR. ELSNER: Can I see 301. 301.

11 BY MR. ELSNER:

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19 (WHEREUPON, a certain document was

20 marked CVS - Elsner Deposition

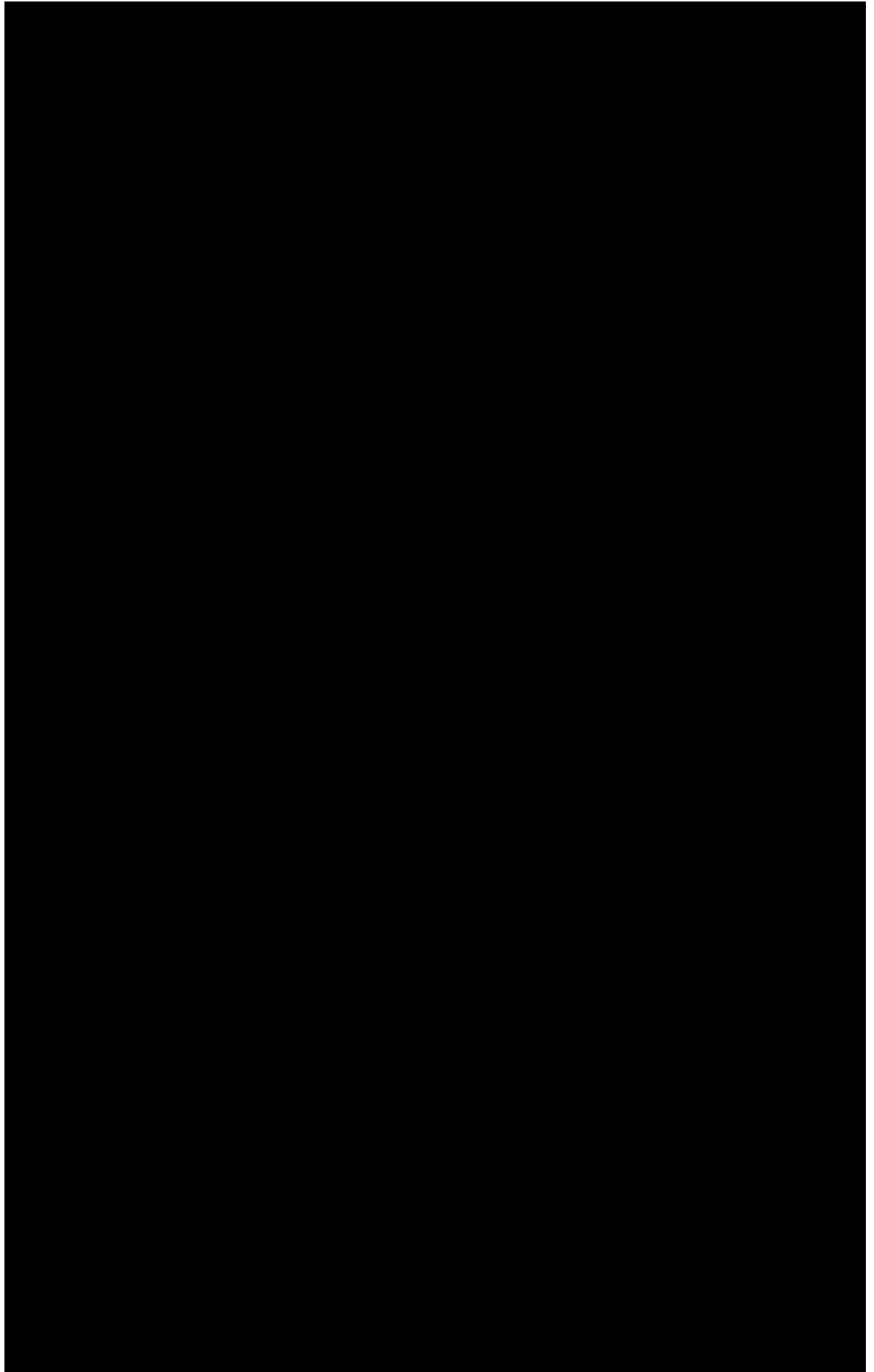
21 Exhibit No. 41, for identification,

22 as of 01/24/2019.)

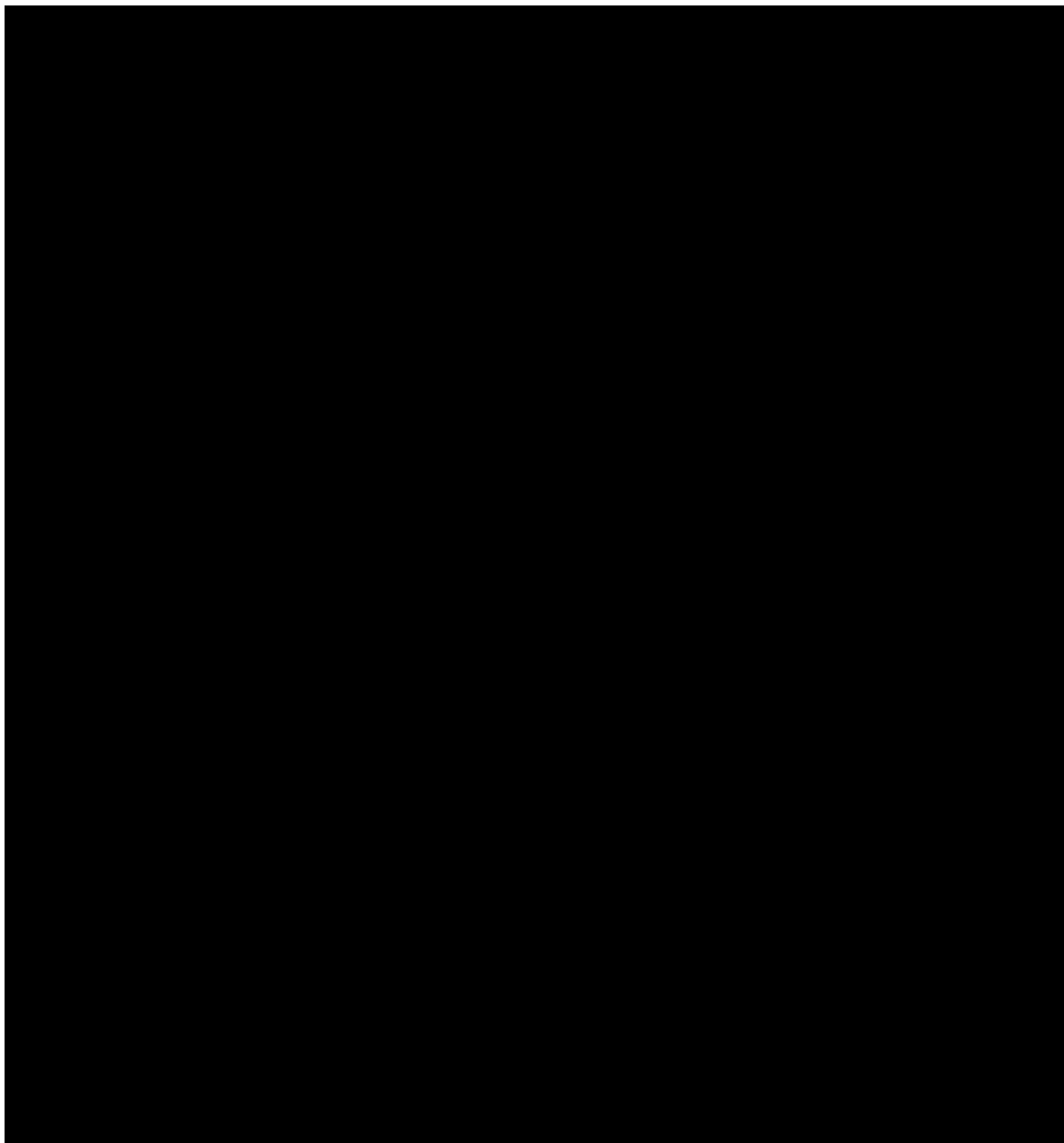
23 BY MR. ELSNER:

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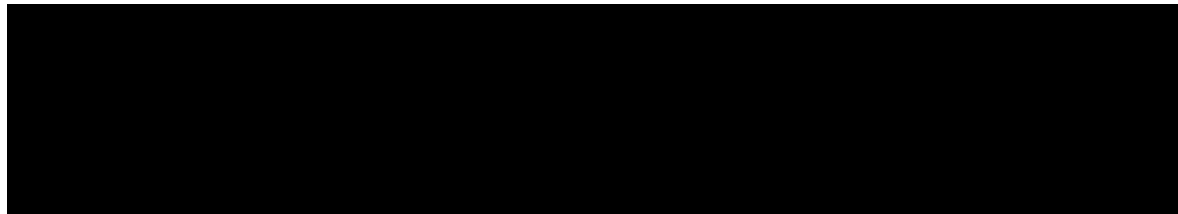


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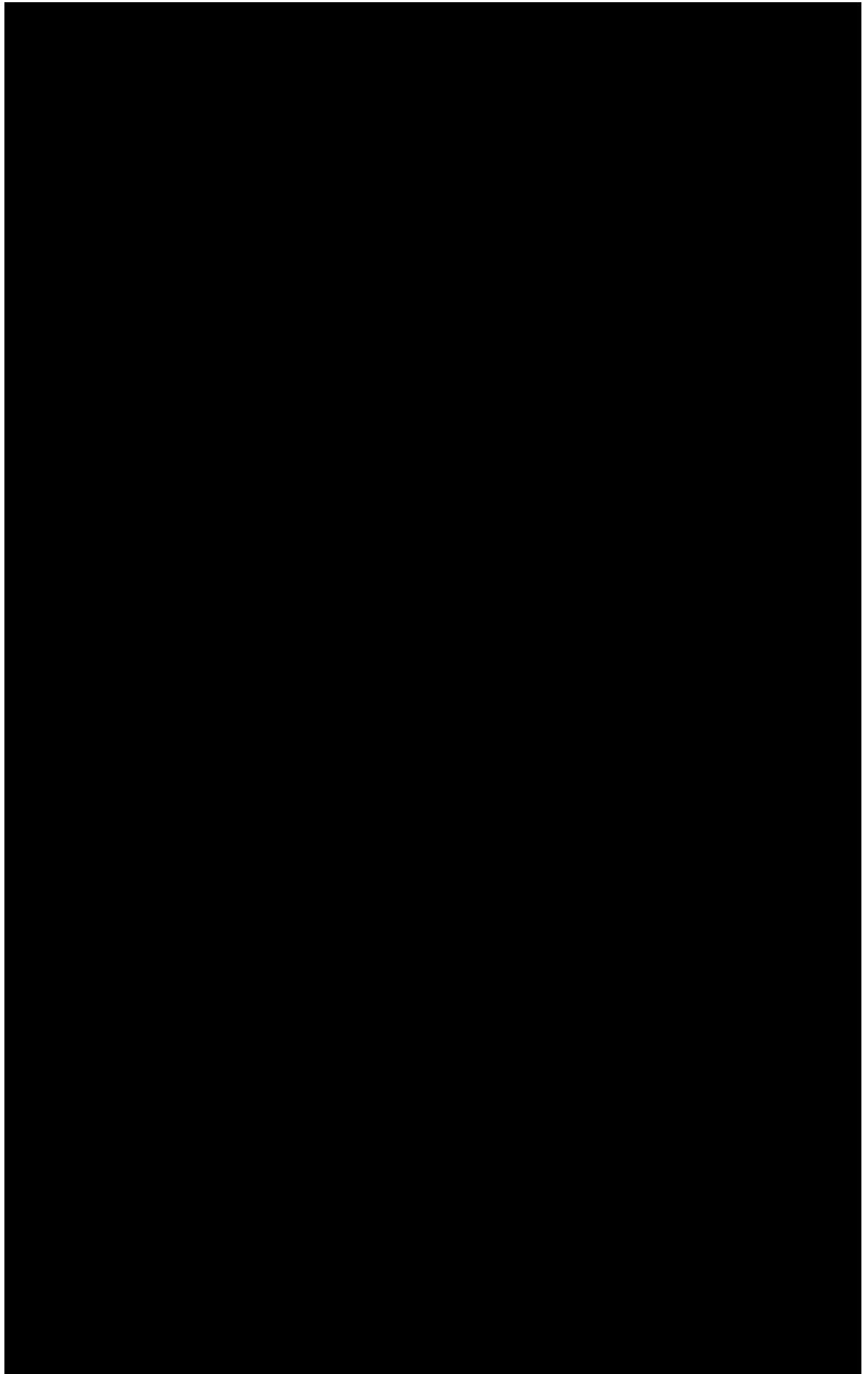


(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 42, for identification,
as of 01/24/2019.)

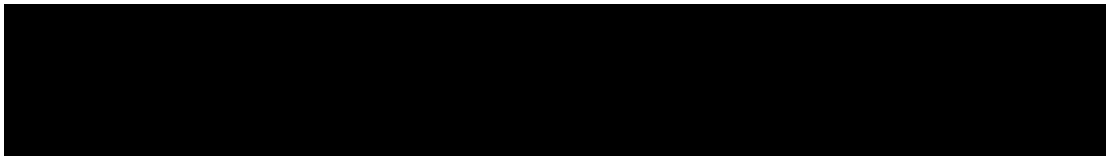
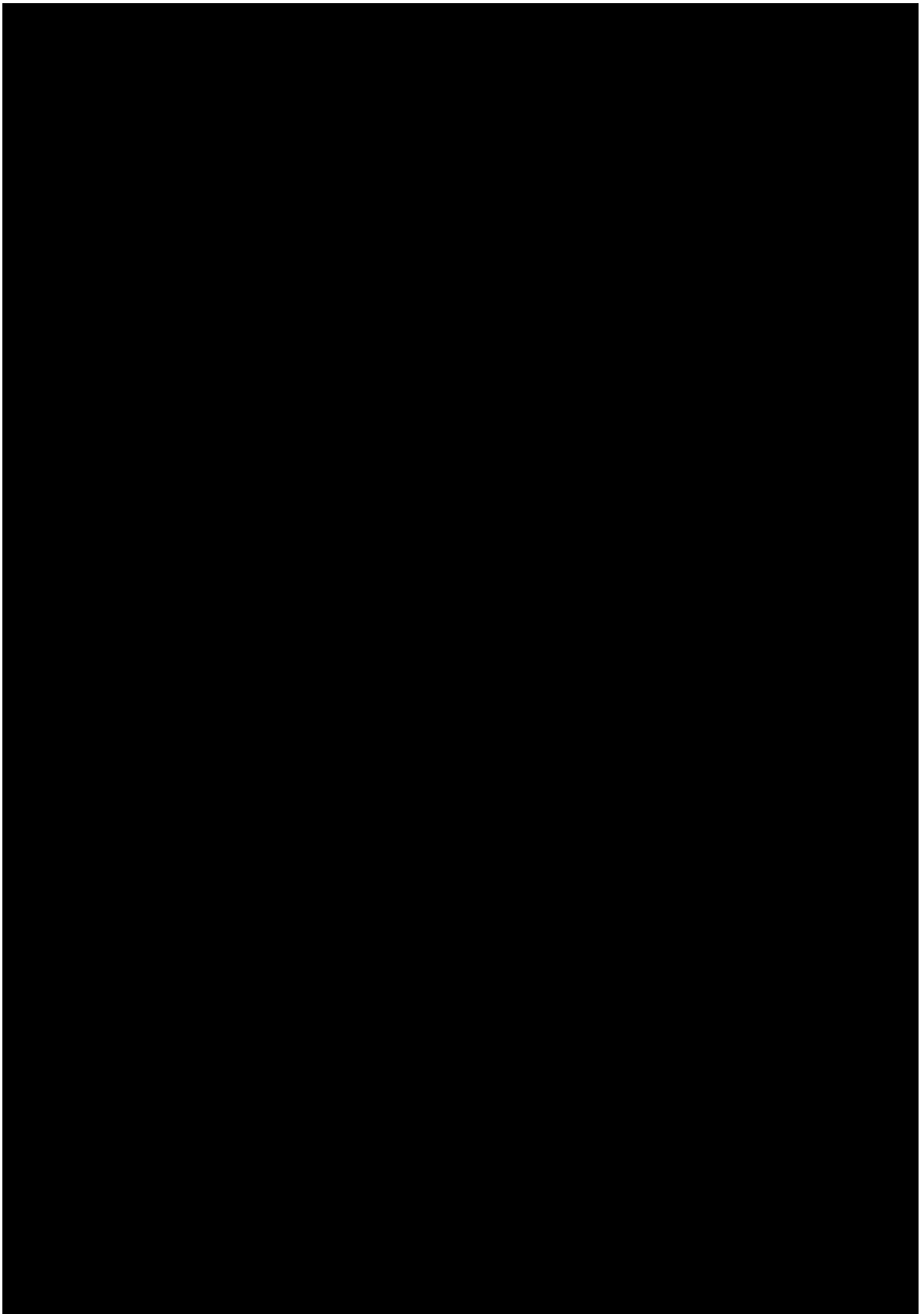
BY MR. ELSNER:



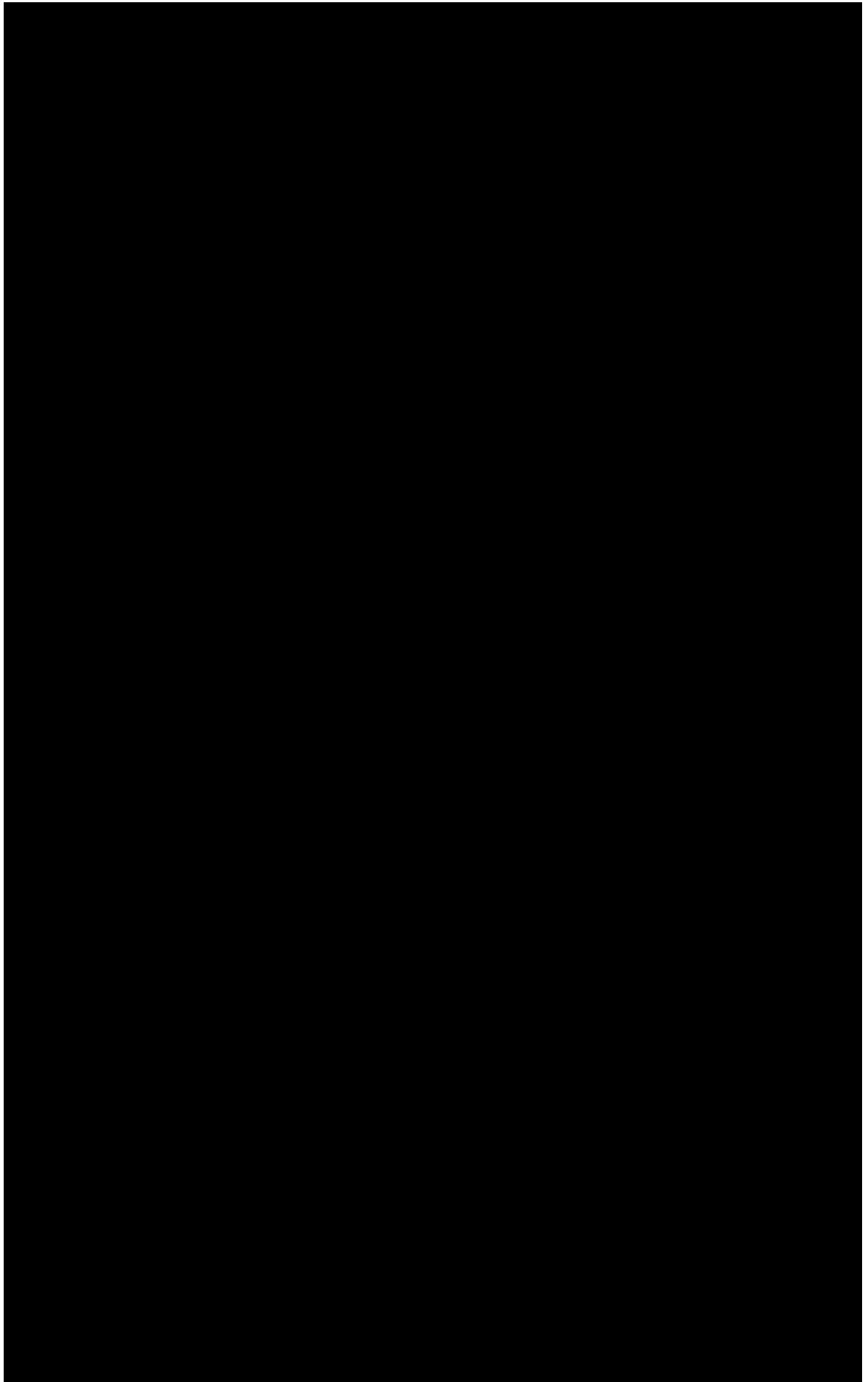
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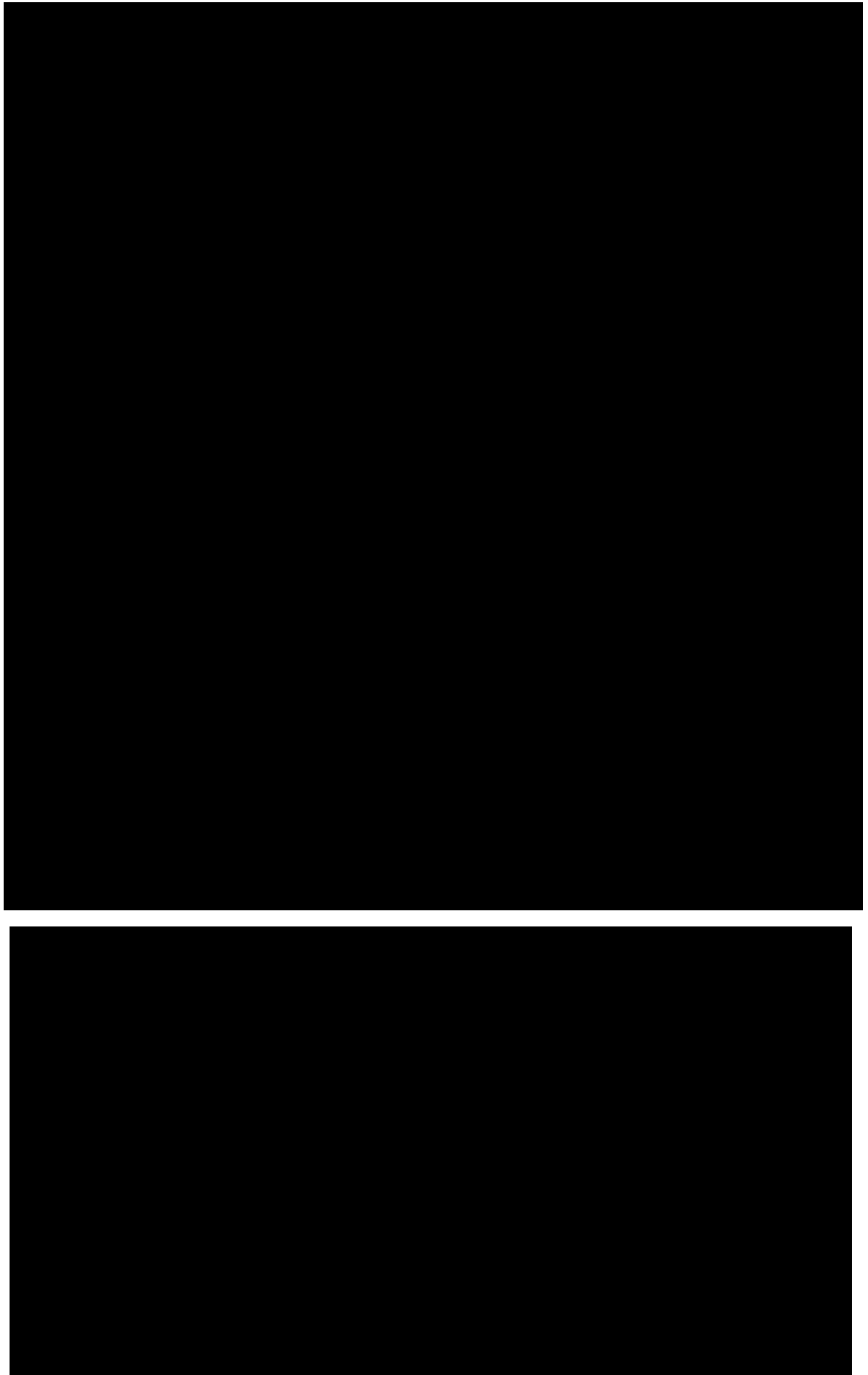
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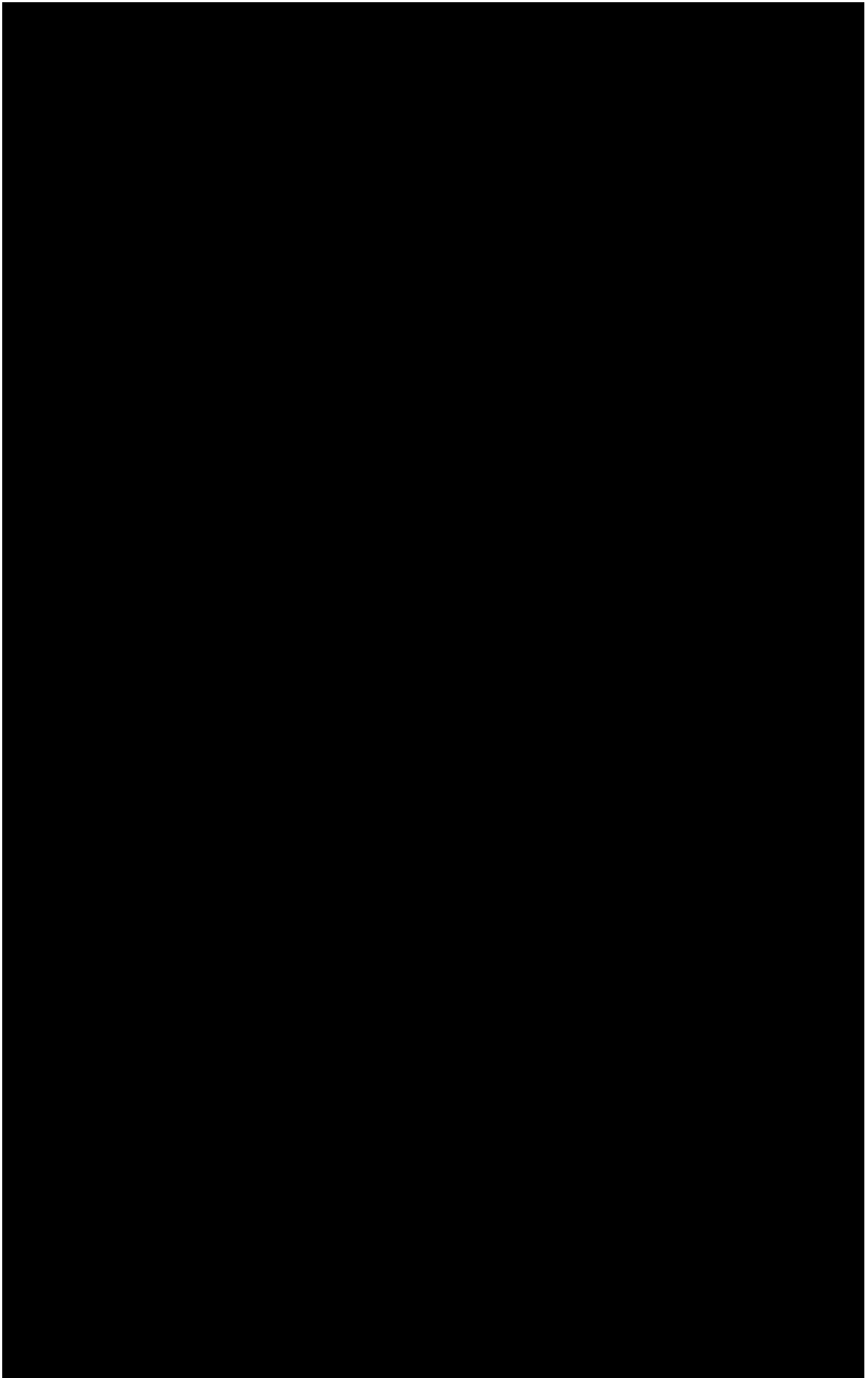
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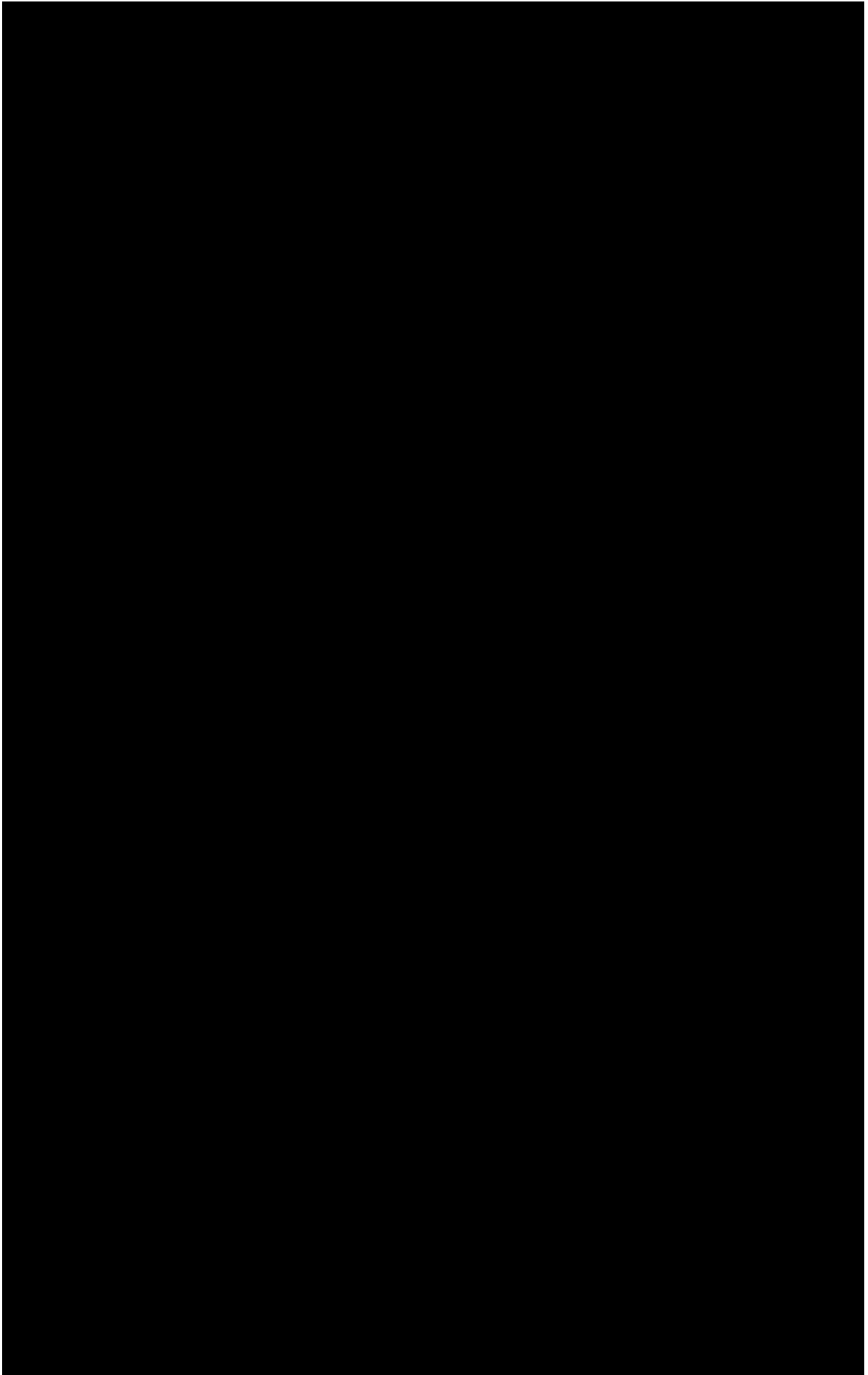
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(WHEREUPON, a certain document was

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marked CVS - Elsner Deposition

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Exhibit No. 43, for identification,

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as of 01/24/2019.)

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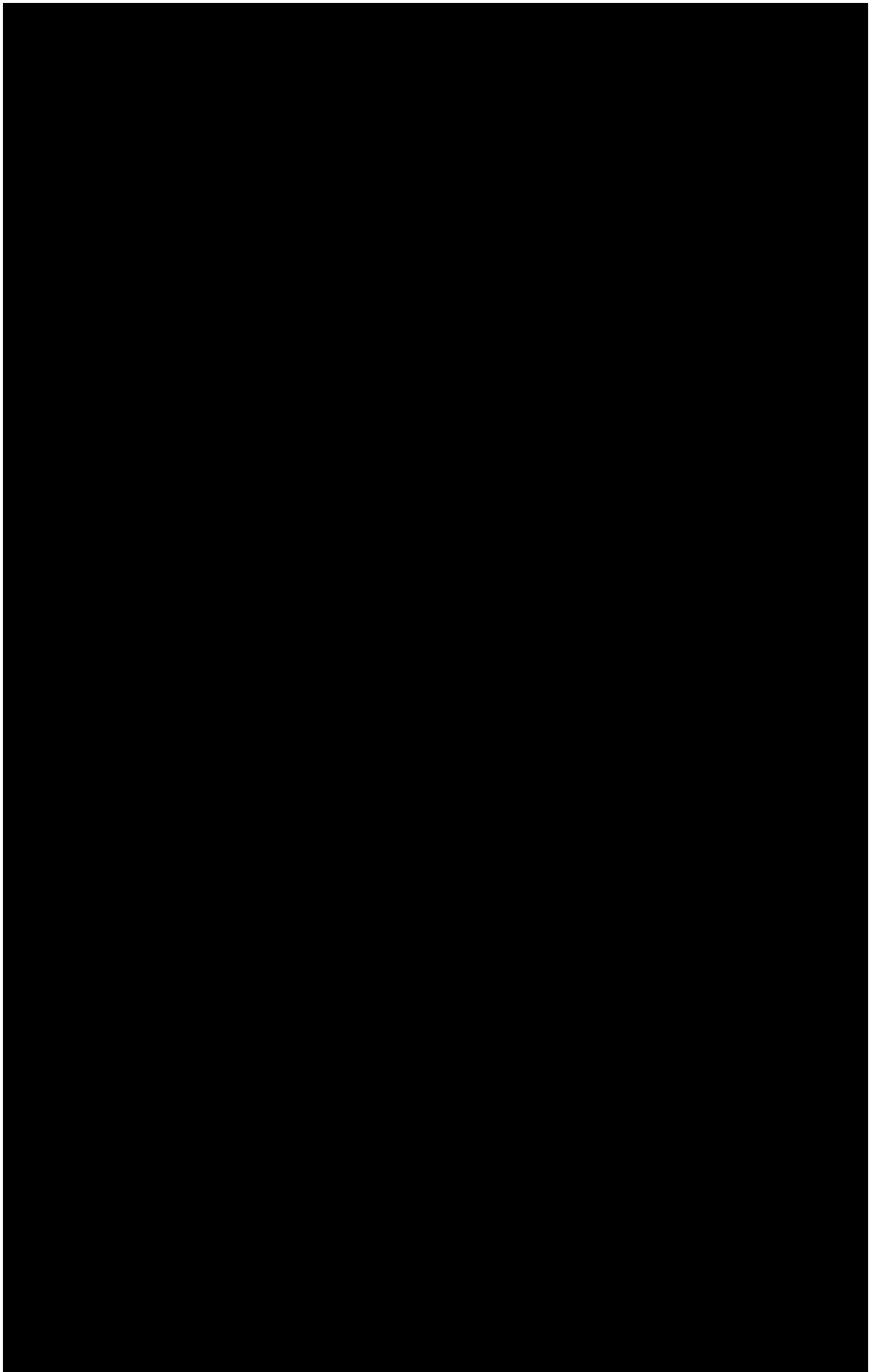
BY MR. ELSNER:

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MR. ELSNER: Can I see 329.

5

MR. CLARK: Are you good? Do you need a break?

6

THE WITNESS: Hmm?

7

MR. CLARK: Are you good?

8

THE WITNESS: I'm fine. Do you need a break?

9

MR. CLARK: Yeah, I'm fine, but thank you.

10

(WHEREUPON, a certain document was

11

marked CVS - Elsner Deposition

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Exhibit No. 44, for identification,

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as of 01/24/2019.)

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BY MR. ELSNER:

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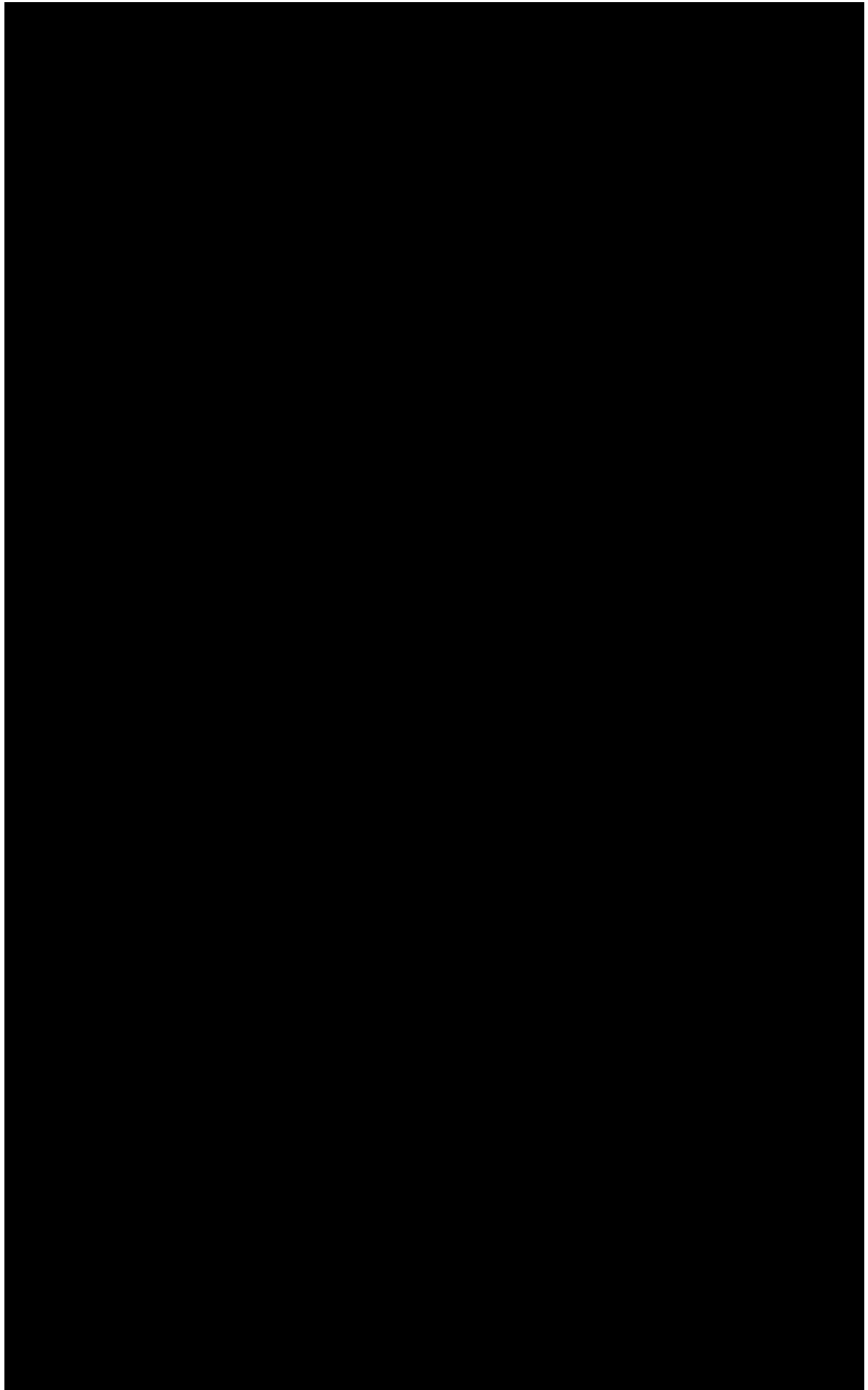
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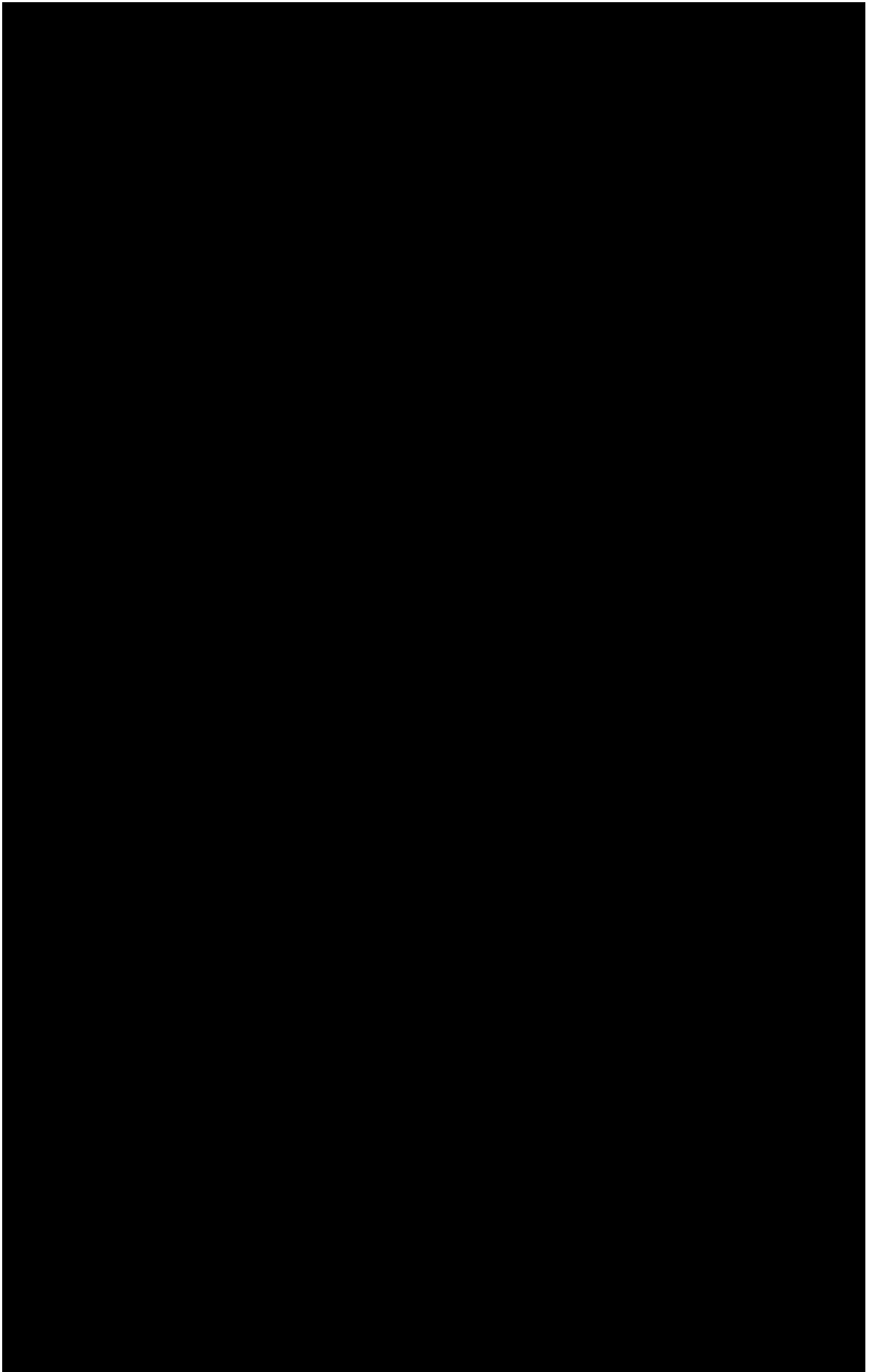
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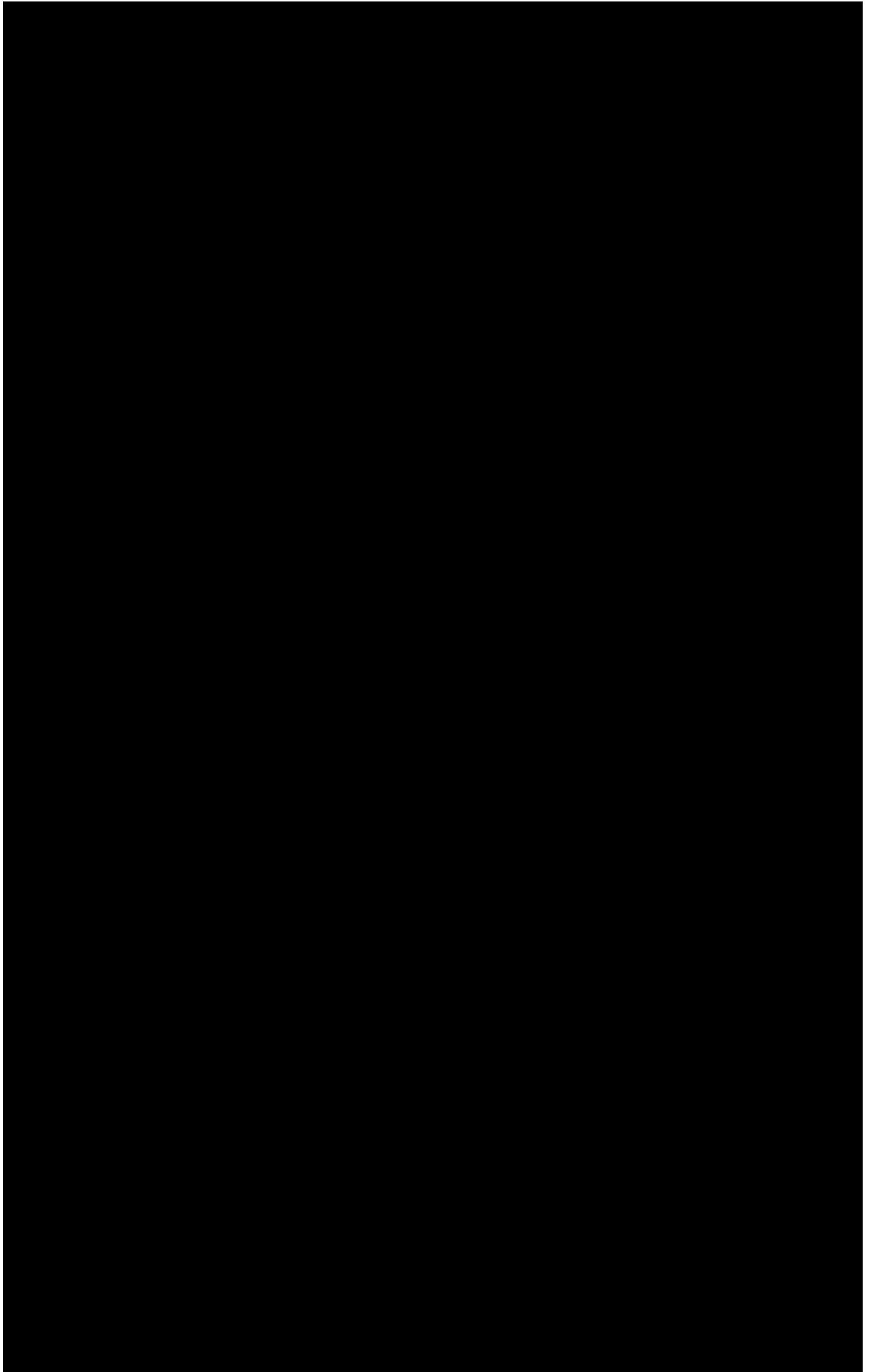
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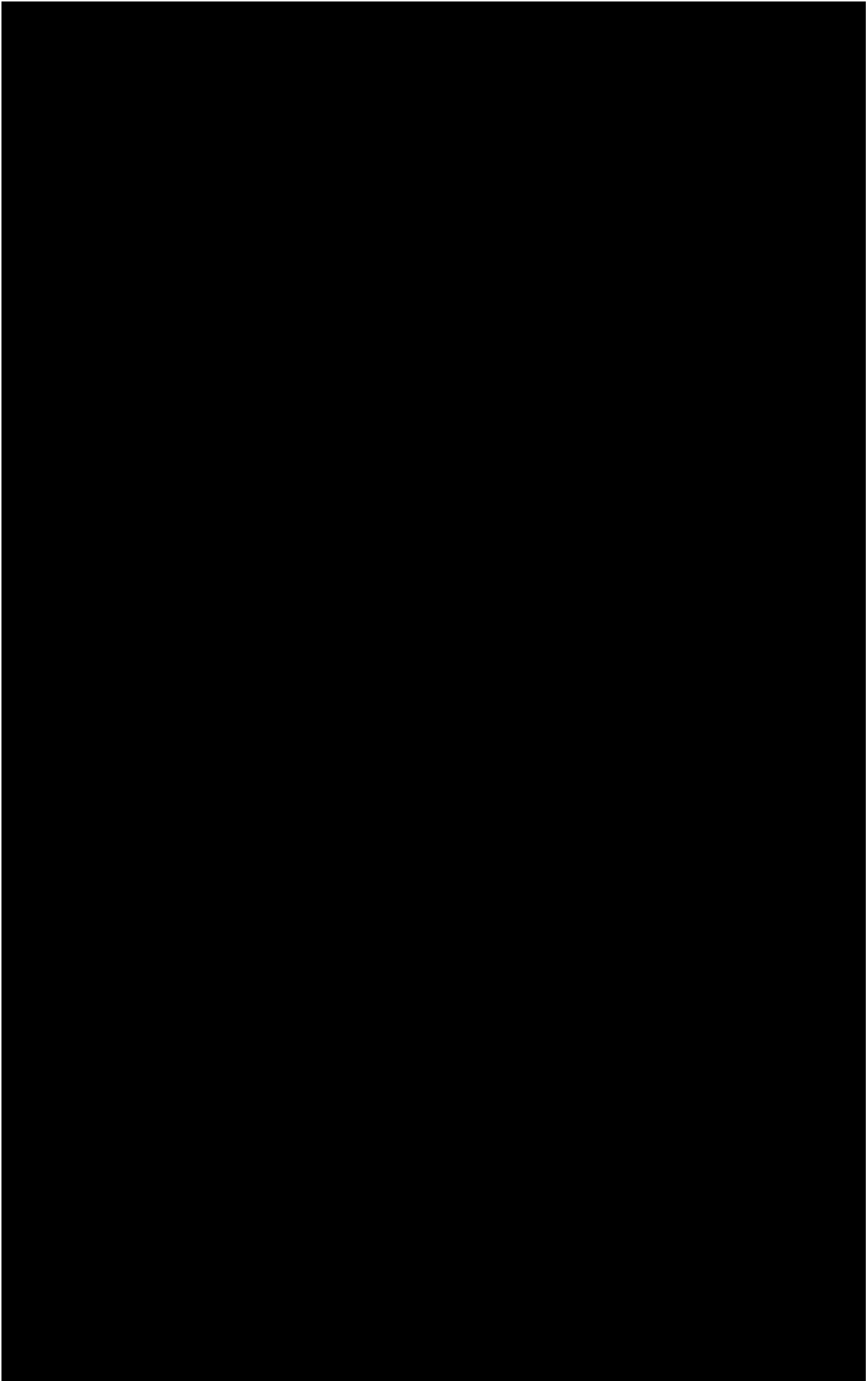
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Exhibit No. 45, for identification,

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as of 01/24/2019.)

8

BY MR. ELSNER:

9

Q. This is Exhibit 45.

10

MR. CLARK: Oh, actually, don't write on that

11

one.

12

BY MR. ELSNER:

13

Q. This is Exhibit 45.

14

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19

Did you end up resigning from CVS?

20

A. Yeah, yeah.

21

Q. Okay.

22

A. Of course.

23

Q. And do you know when your last day was at

24

CVS?

1 A. Not right offhand, no.

2 Q. Okay.

3 I think your LinkedIn page said it was
4 November?

5 A. Yeah, that was just something that I --
6 yeah, that's the, you know, I -- the LinkedIn page may
7 not be accurate down to the day.

8 Q. Completely acc -- down to the day?

9 A. No, it was just an approximation.

10 Q. Okay. So it could have been sometime in
11 October or November of 2013, is that right?

12 A. Yeah, I just know my last week Mark took
13 me out for a lunch, you know, as a going away, and
14 that's -- but I don't even remember what day that was,
15 so...

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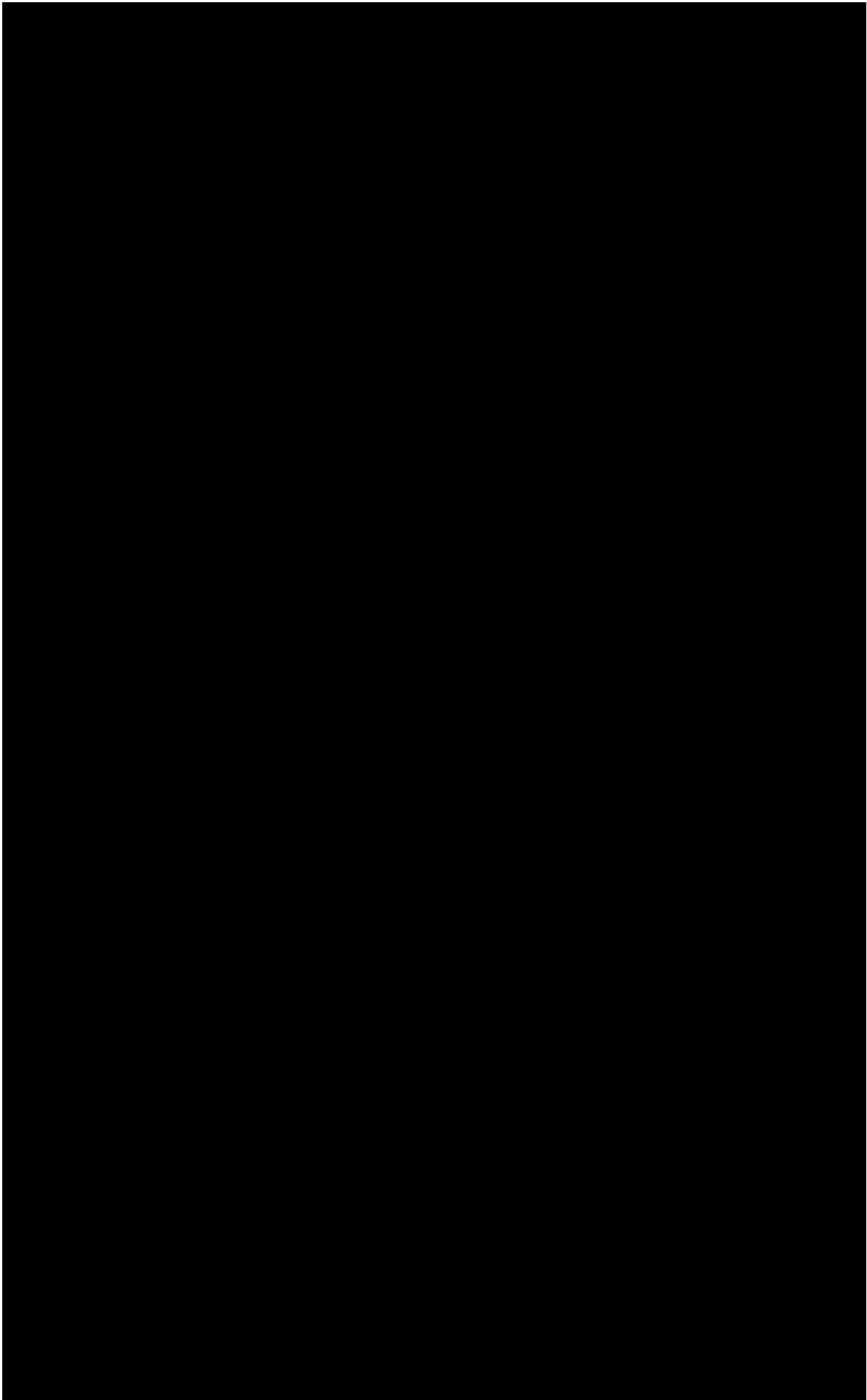
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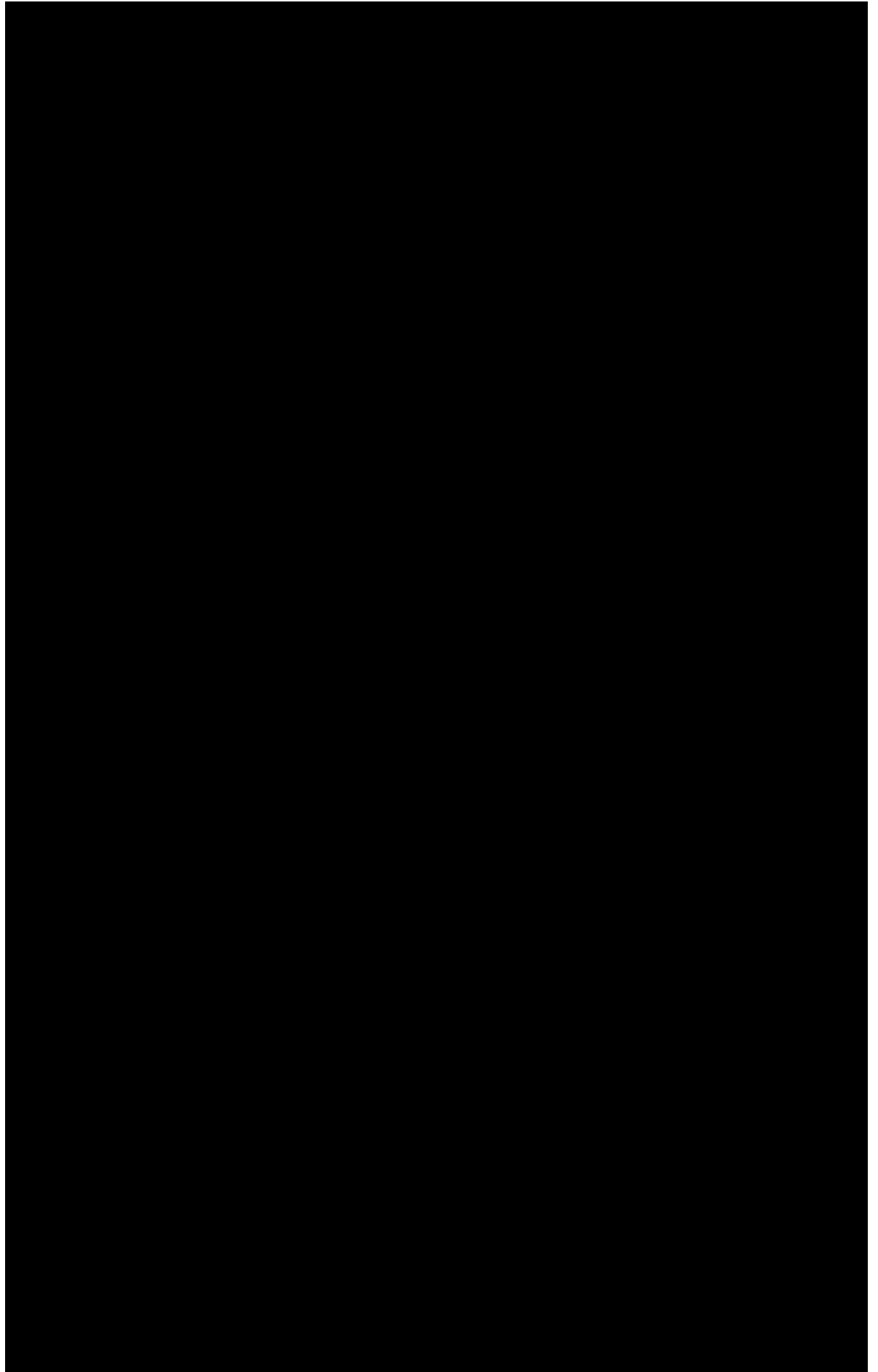
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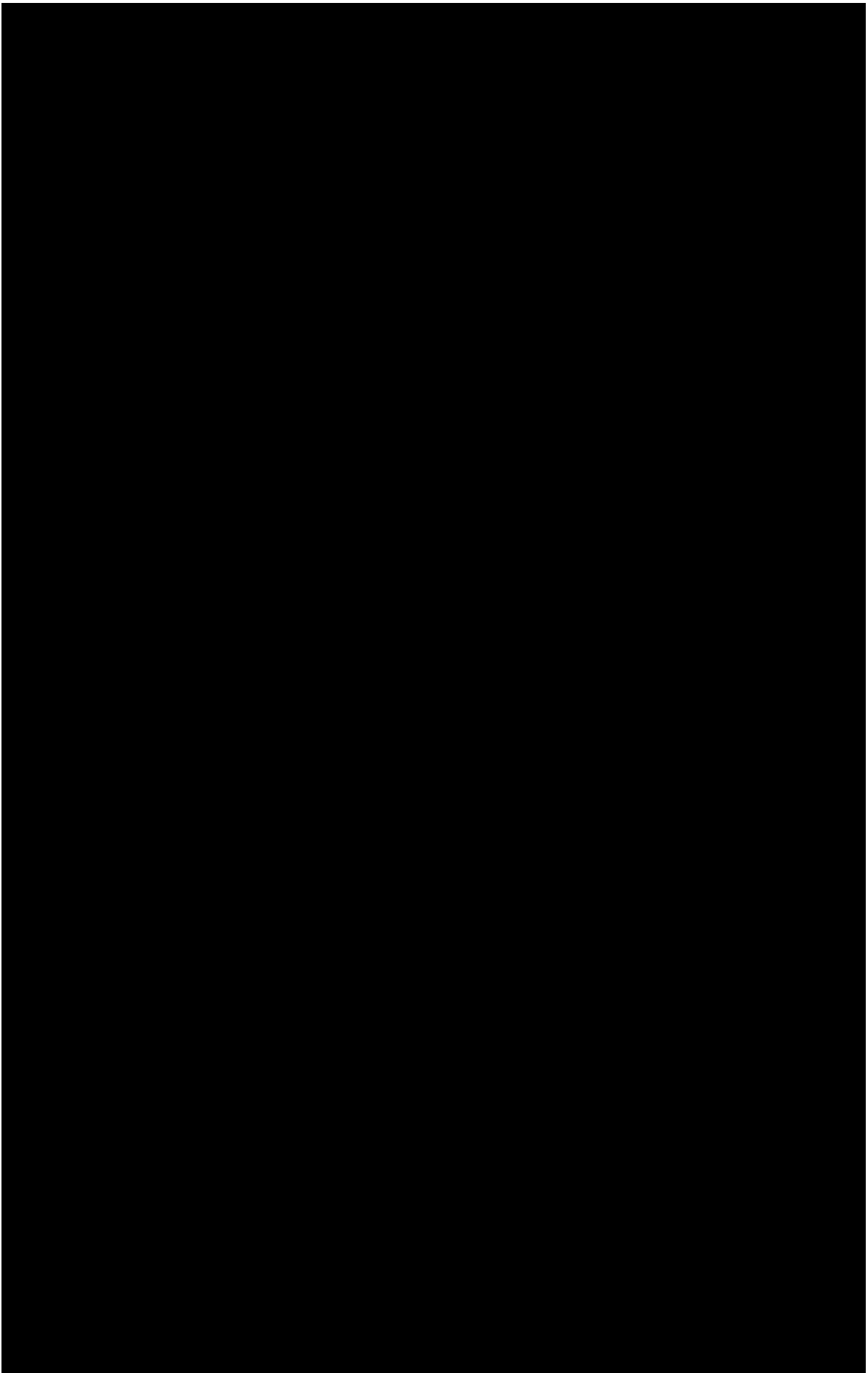
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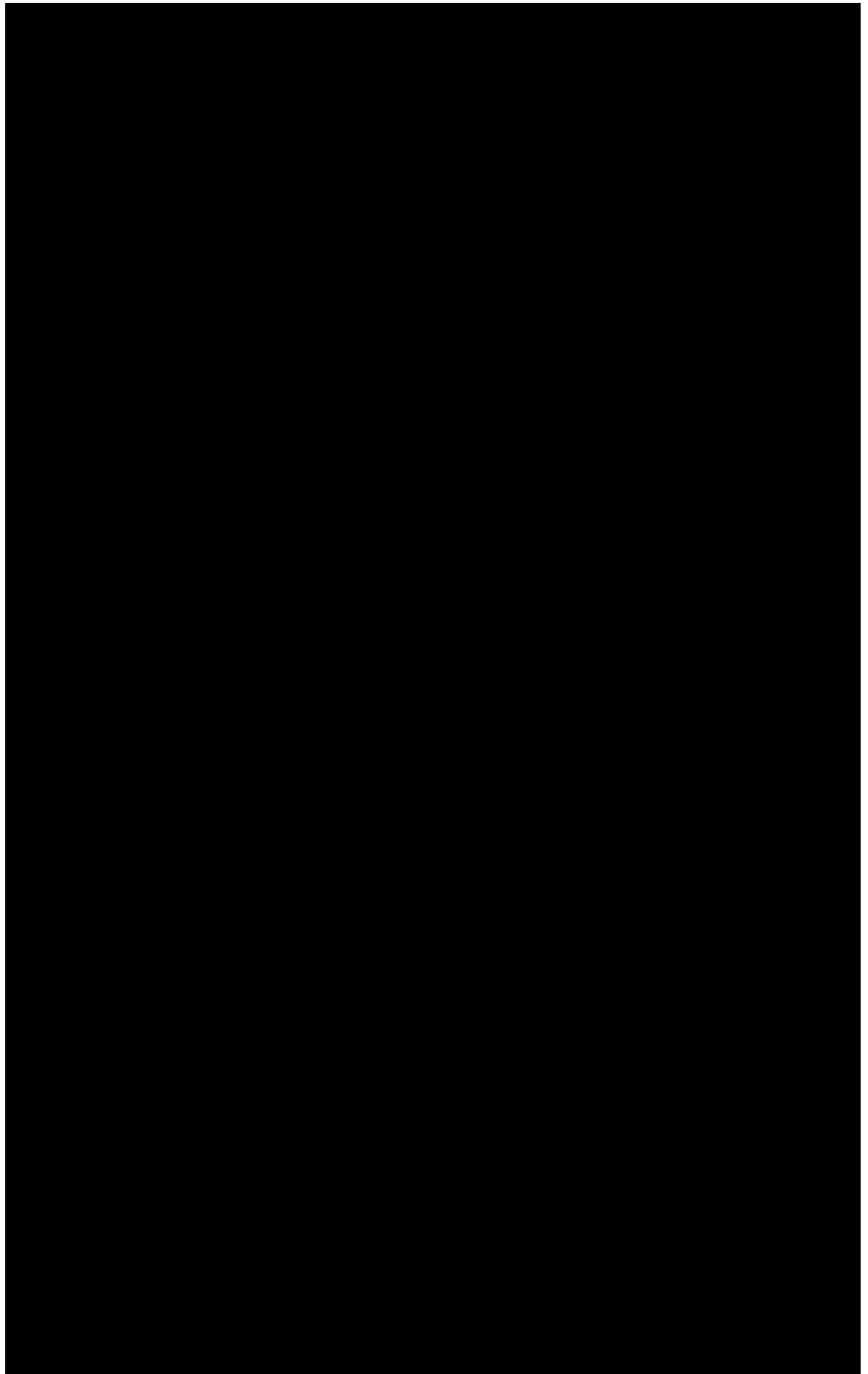
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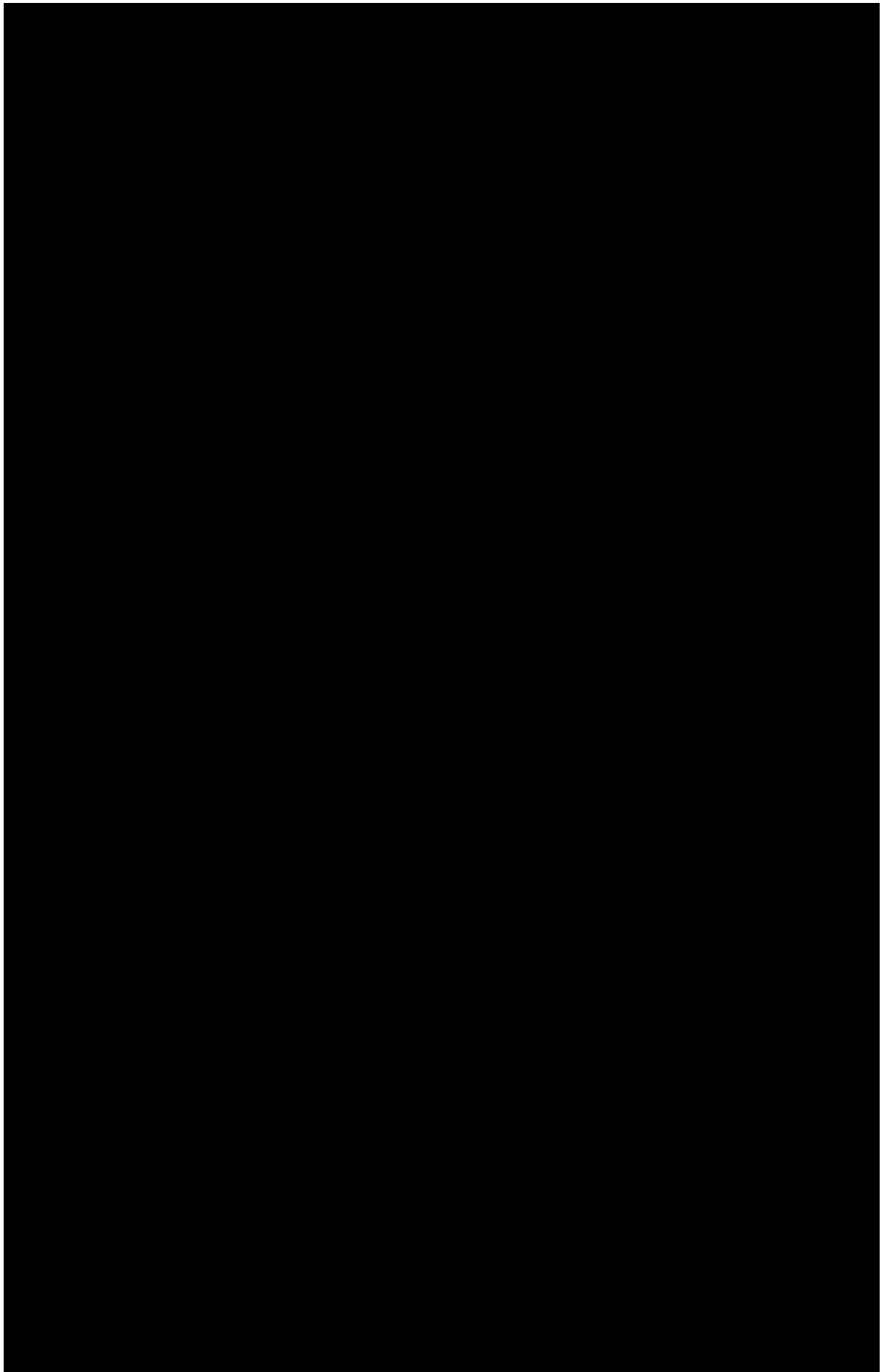
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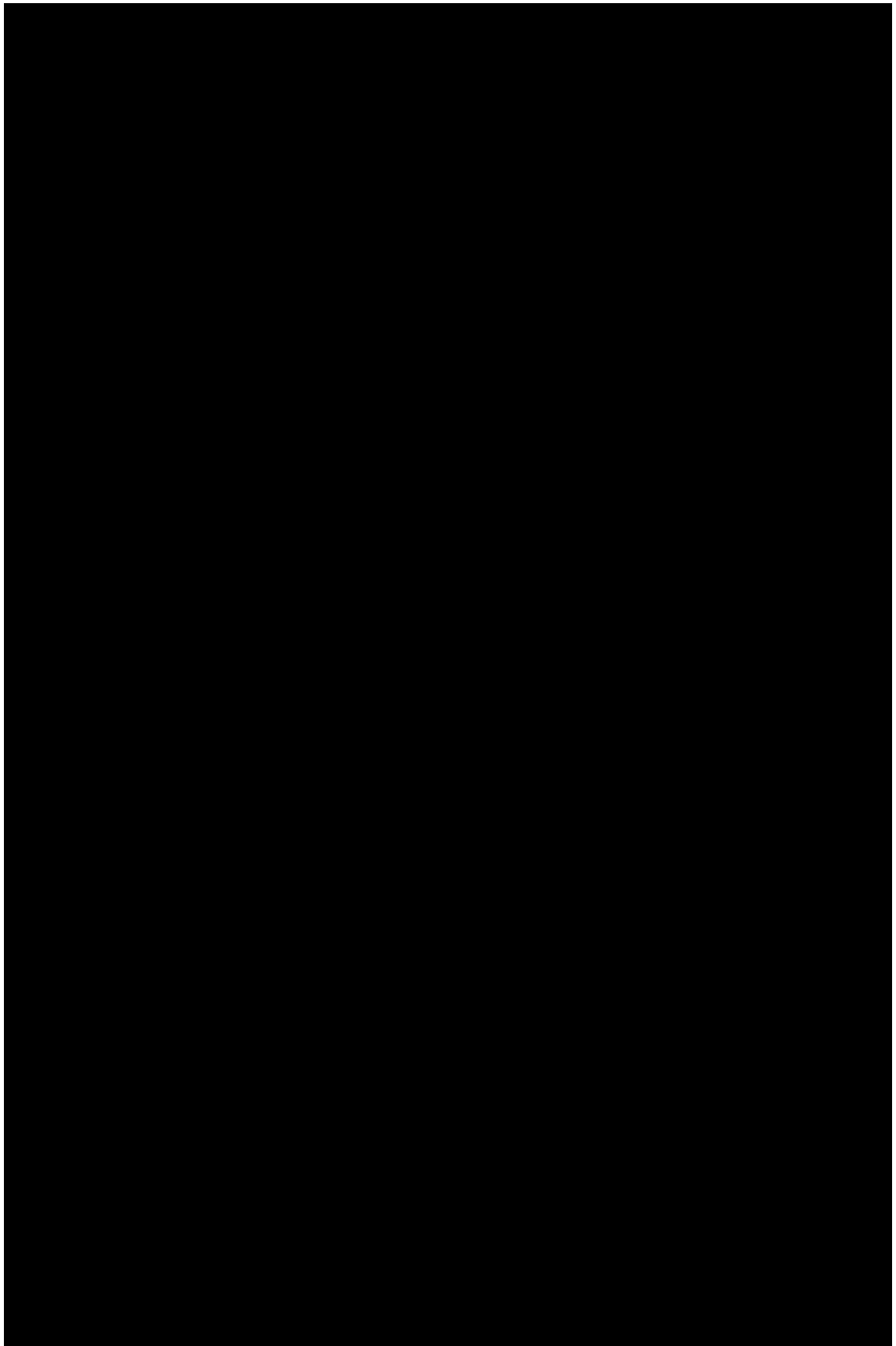
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23 MR. ELSNER: Why don't we take a quick break.
24 THE VIDEOGRAPHER: We are off the record at

1 3:23 p.m.

2 (WHEREUPON, a recess was had

3 from 3:23 to 3:39 p.m.)

4 THE VIDEOGRAPHER: We are back on the record at

5 3:39 p.m.

6 BY MR. ELSNER:

7 Q. Mr. Baker --

8 A. You can call me Kelly, if you don't mind.

9 Q. Okay. Okay. Thanks.

10 Did you -- were you aware of how many --

11 oh. Why don't we get it settled.

12 A. Okay. I got it.

13

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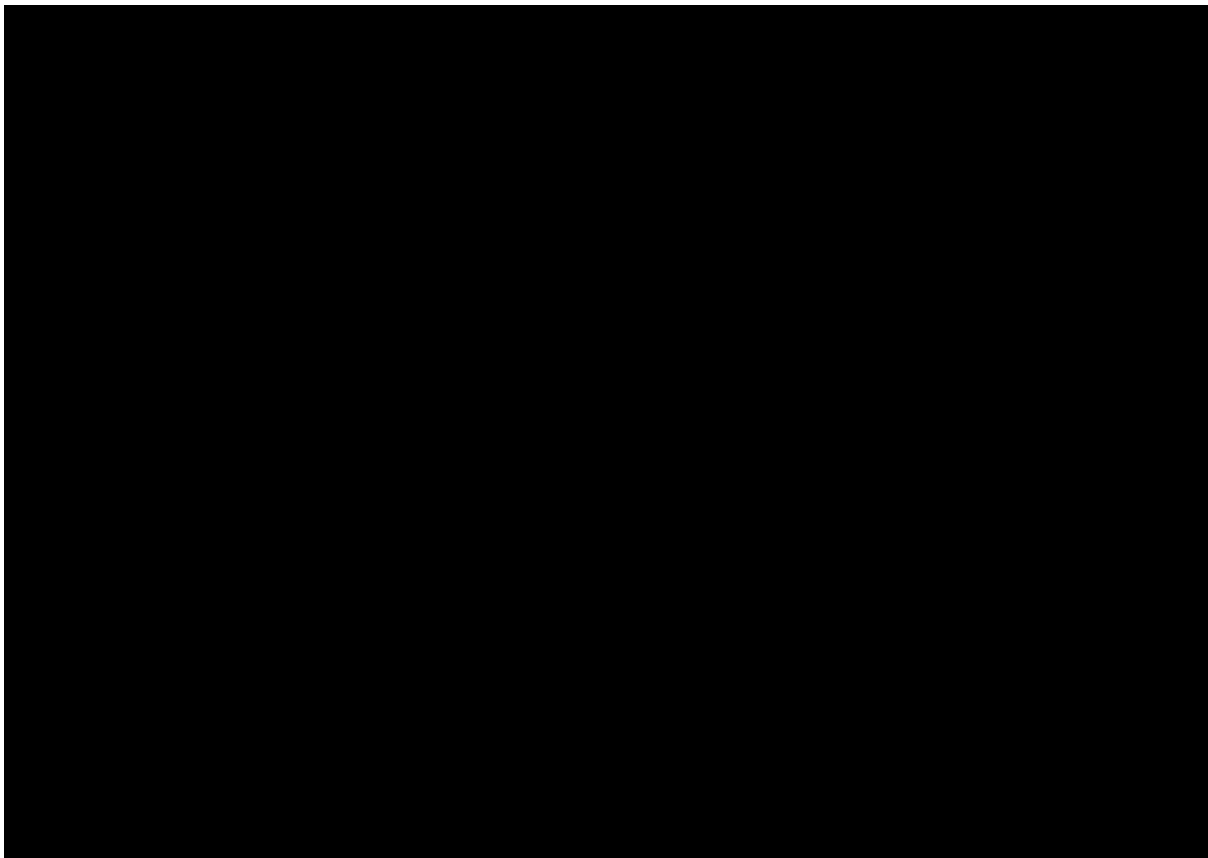
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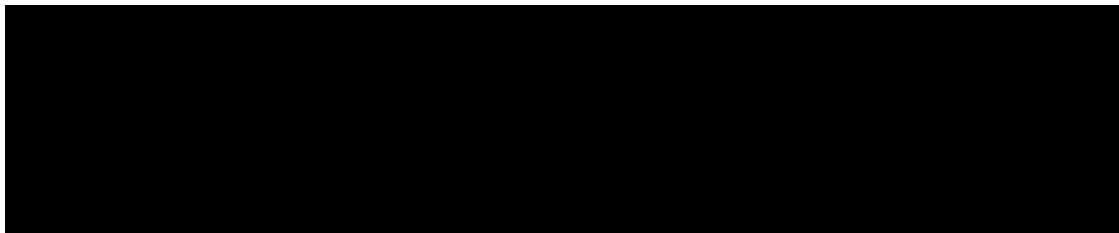


12 Q. Okay. Let me -- let me show you a
13 document. This is Exhibit 46.

14 (WHEREUPON, a certain document was
15 marked CVS - Elsner Deposition
16 Exhibit No. 46, for identification,
17 as of 01/24/2019.)

18 BY MR. ELSNER:

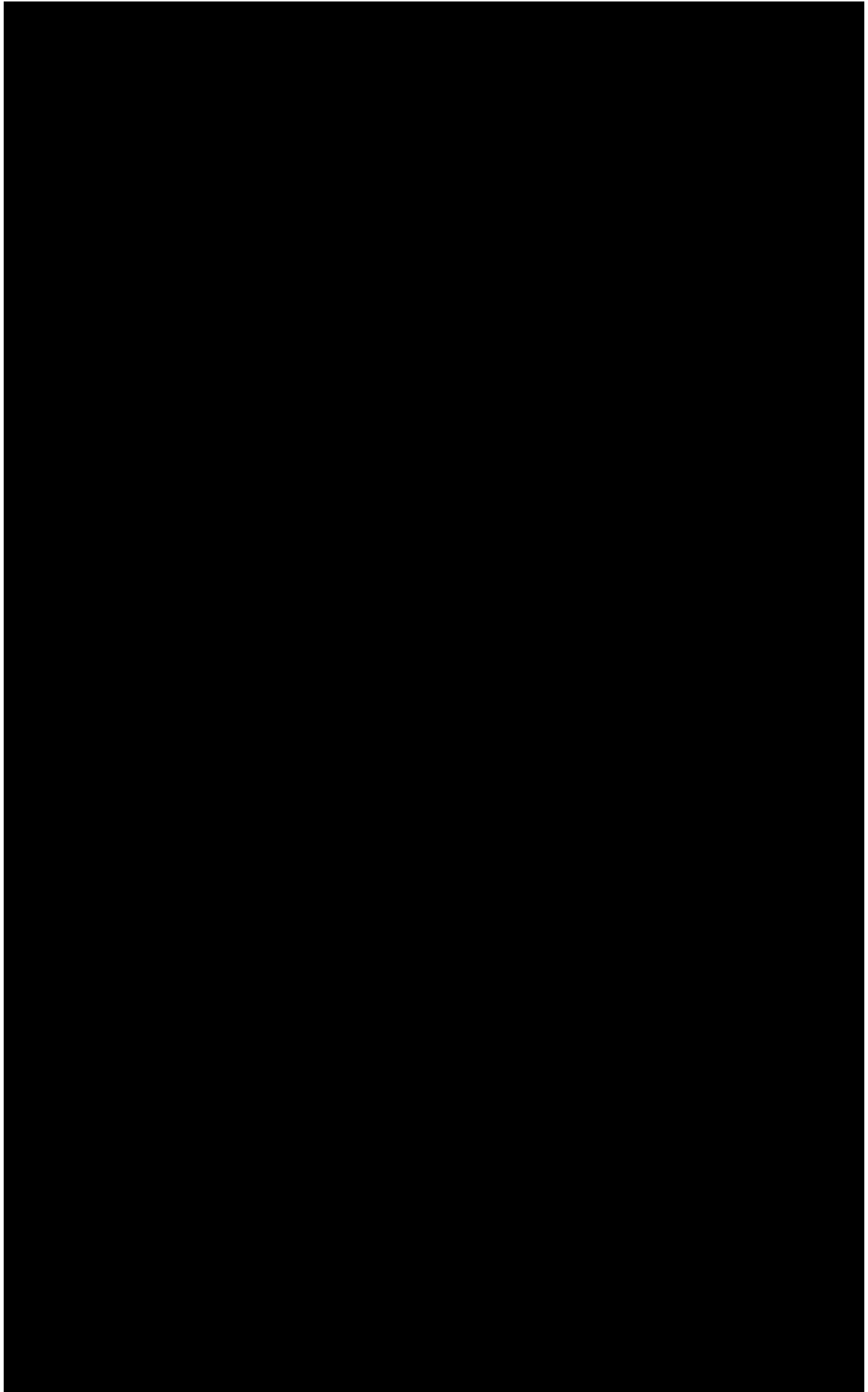
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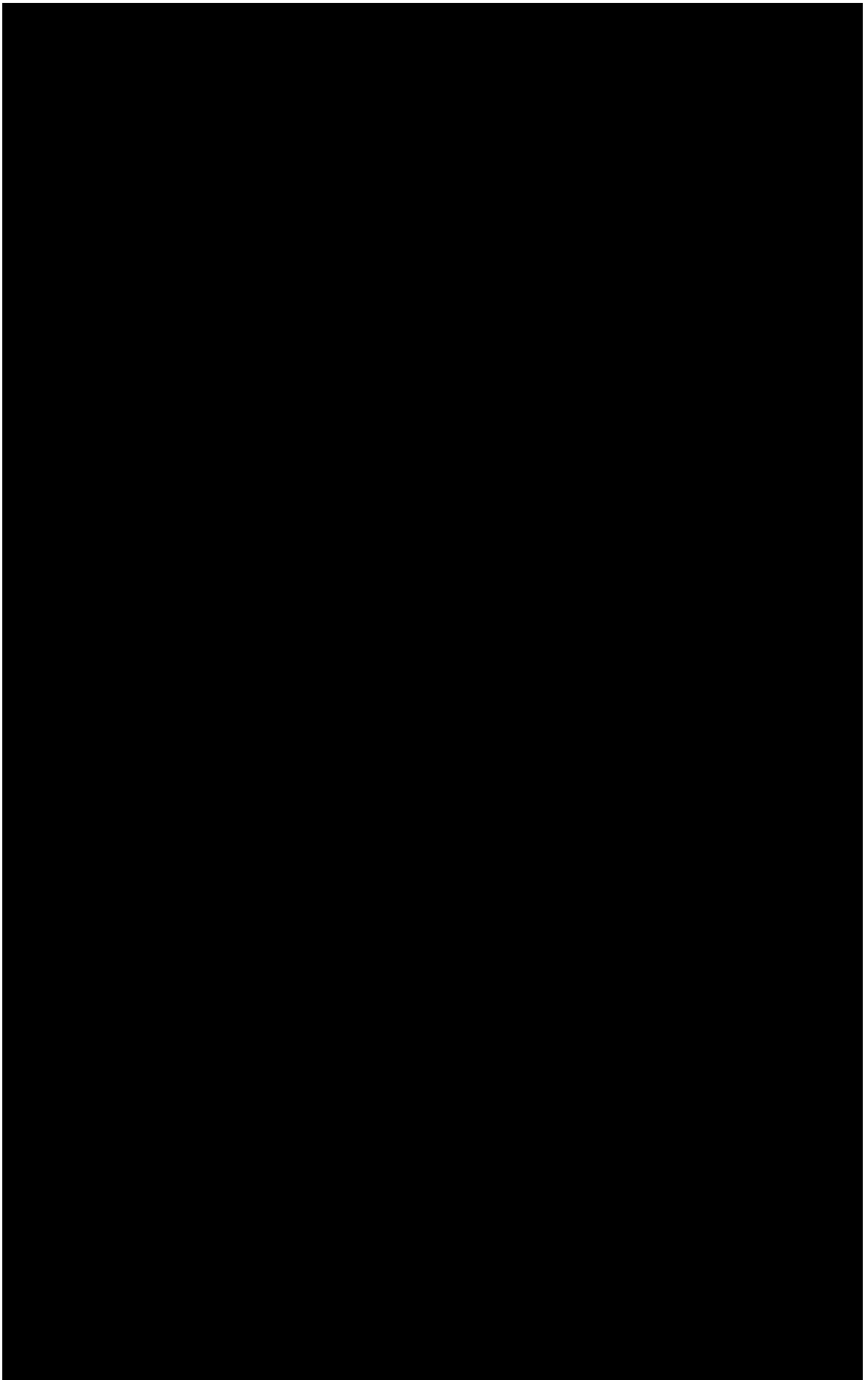
22 Do you know who Daniel Gillen is?

23 A. No. I'm assuming you are going to tell me
24 he is DEA?

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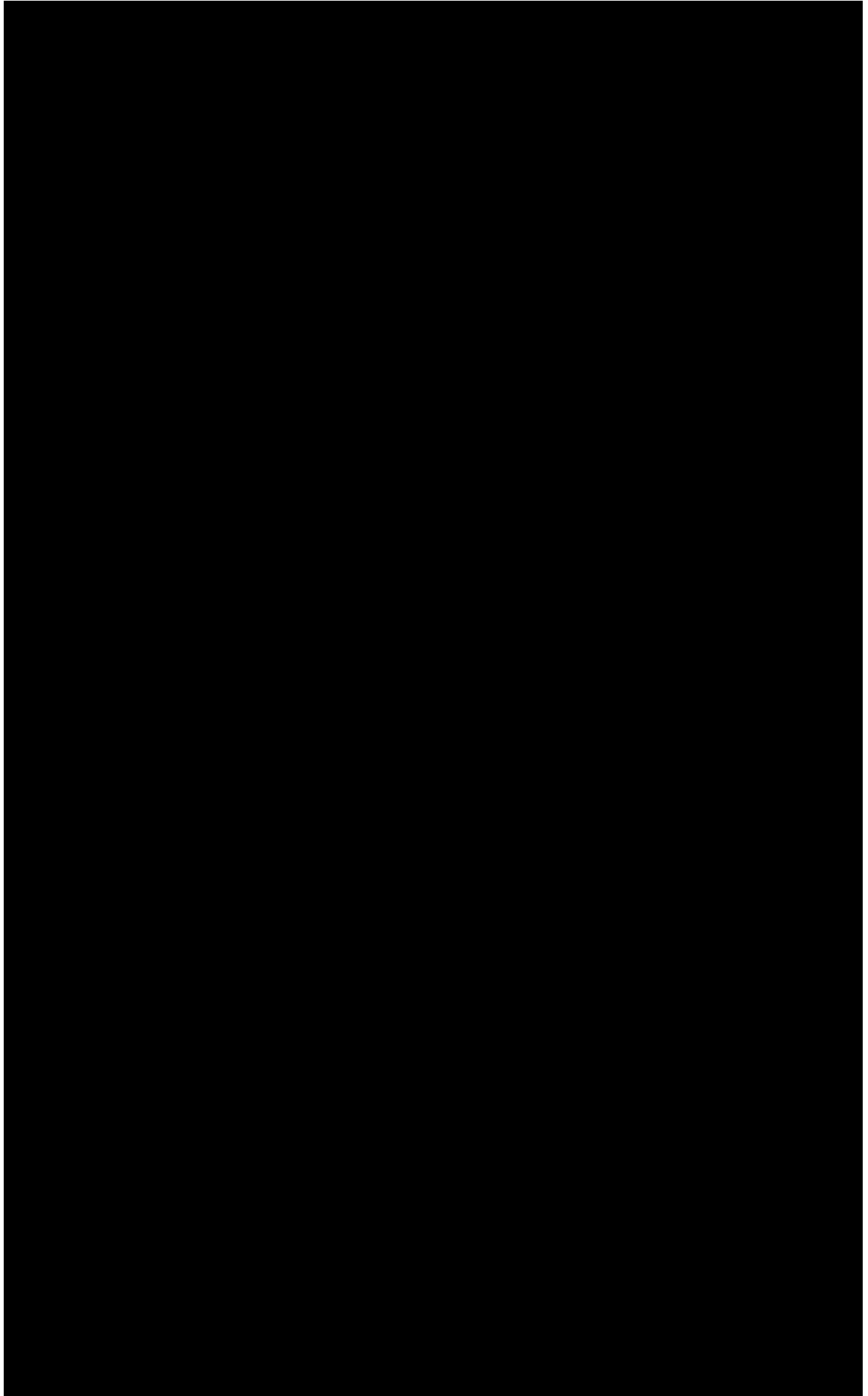
16 Q. Let me -- let me mark this as the next
17 exhibit. Sorry. We are going to jump around just a
18 little bit.

19 (WHEREUPON, a certain document was
20 marked CVS - Elsner Deposition
21 Exhibit No. 47, for identification,
22 as of 01/24/2019.)

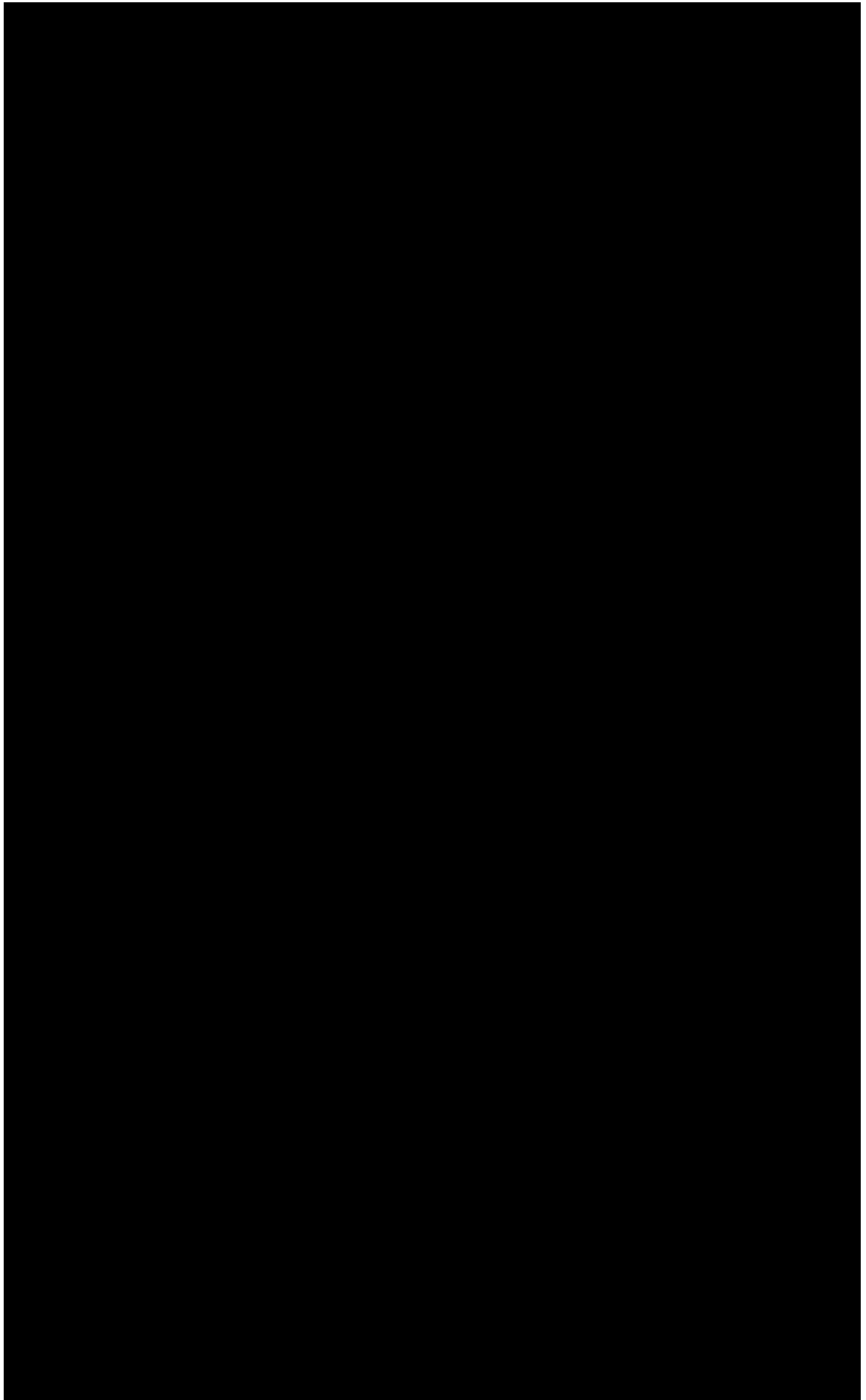
23 BY MR. ELSNER:

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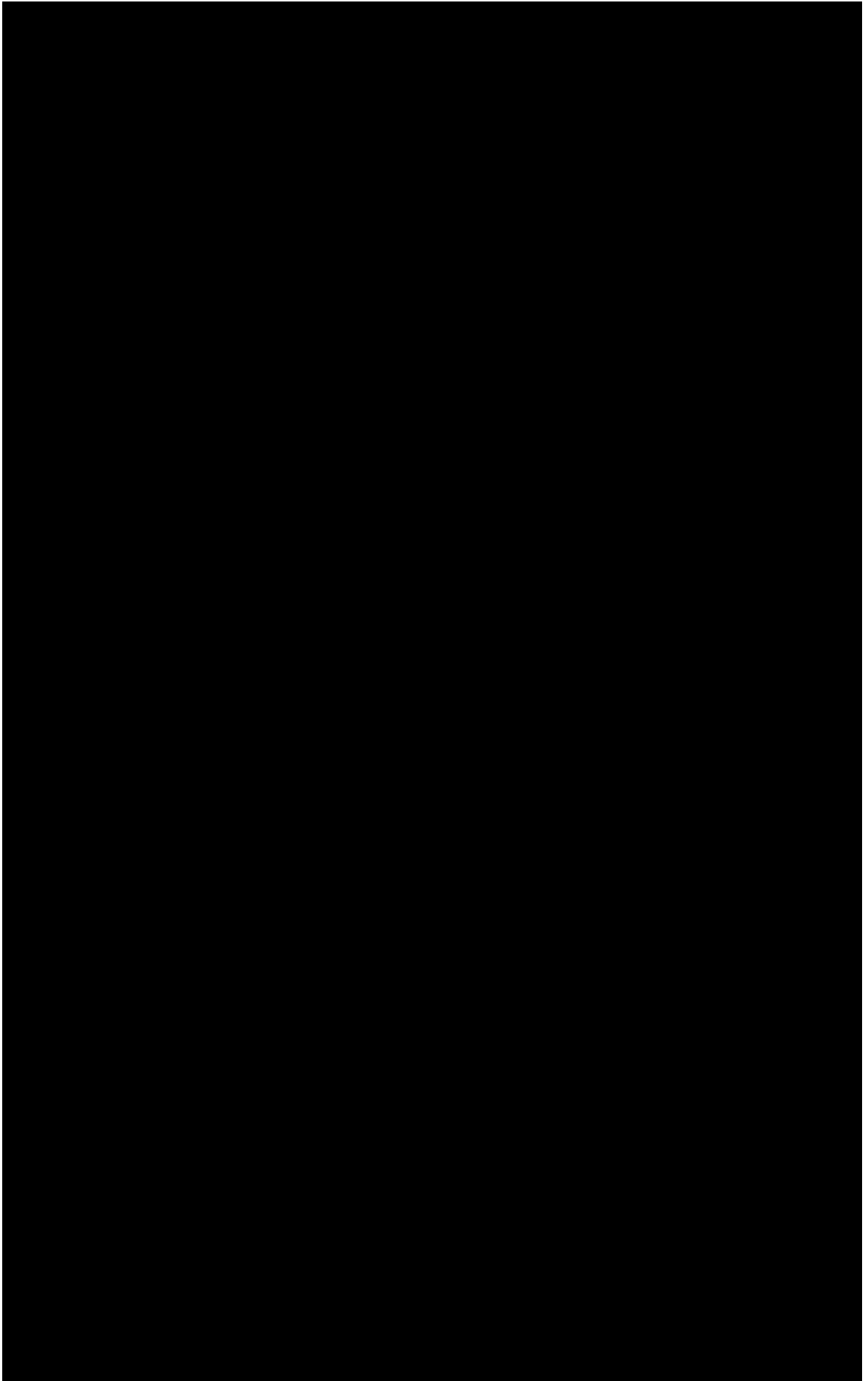
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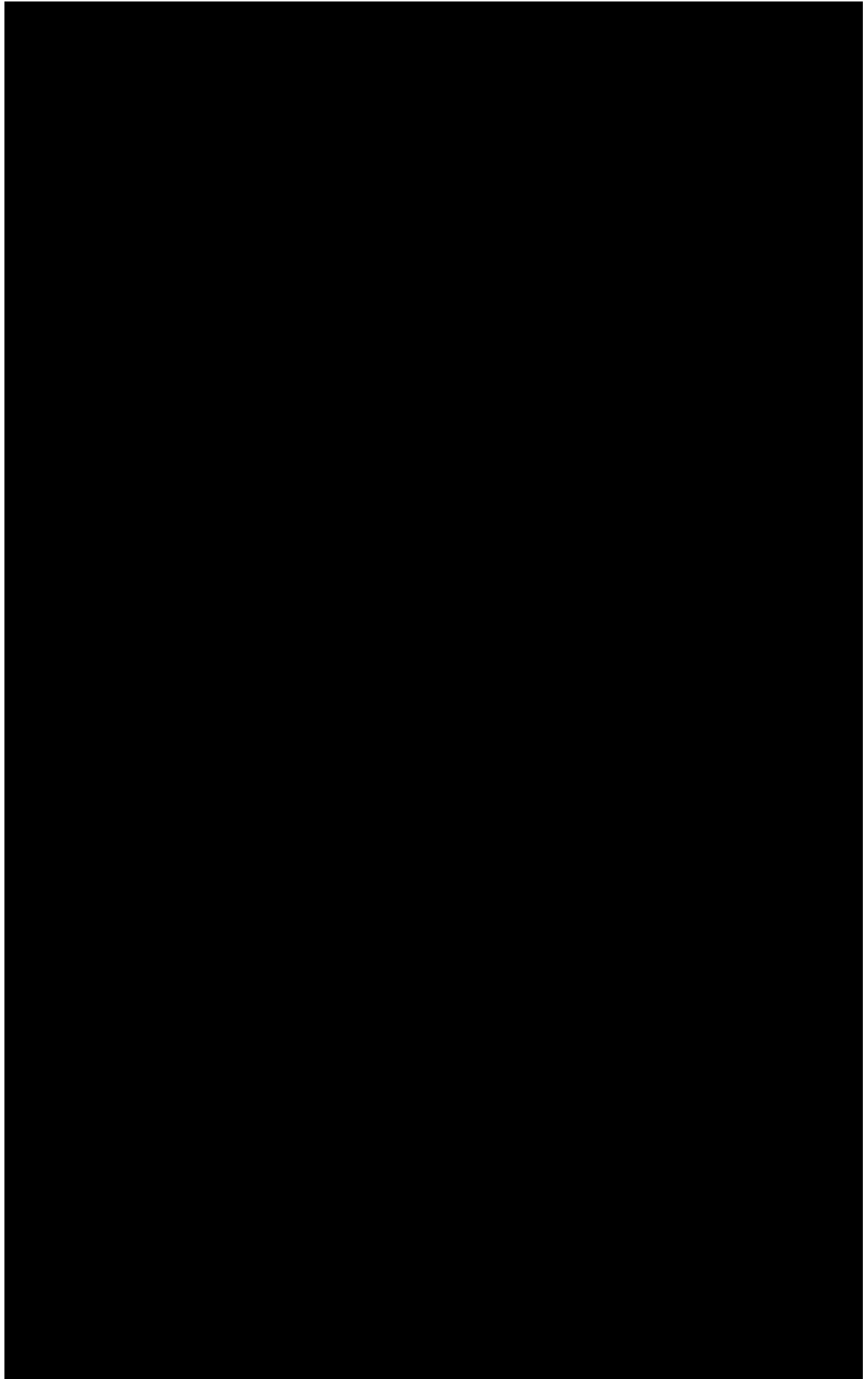
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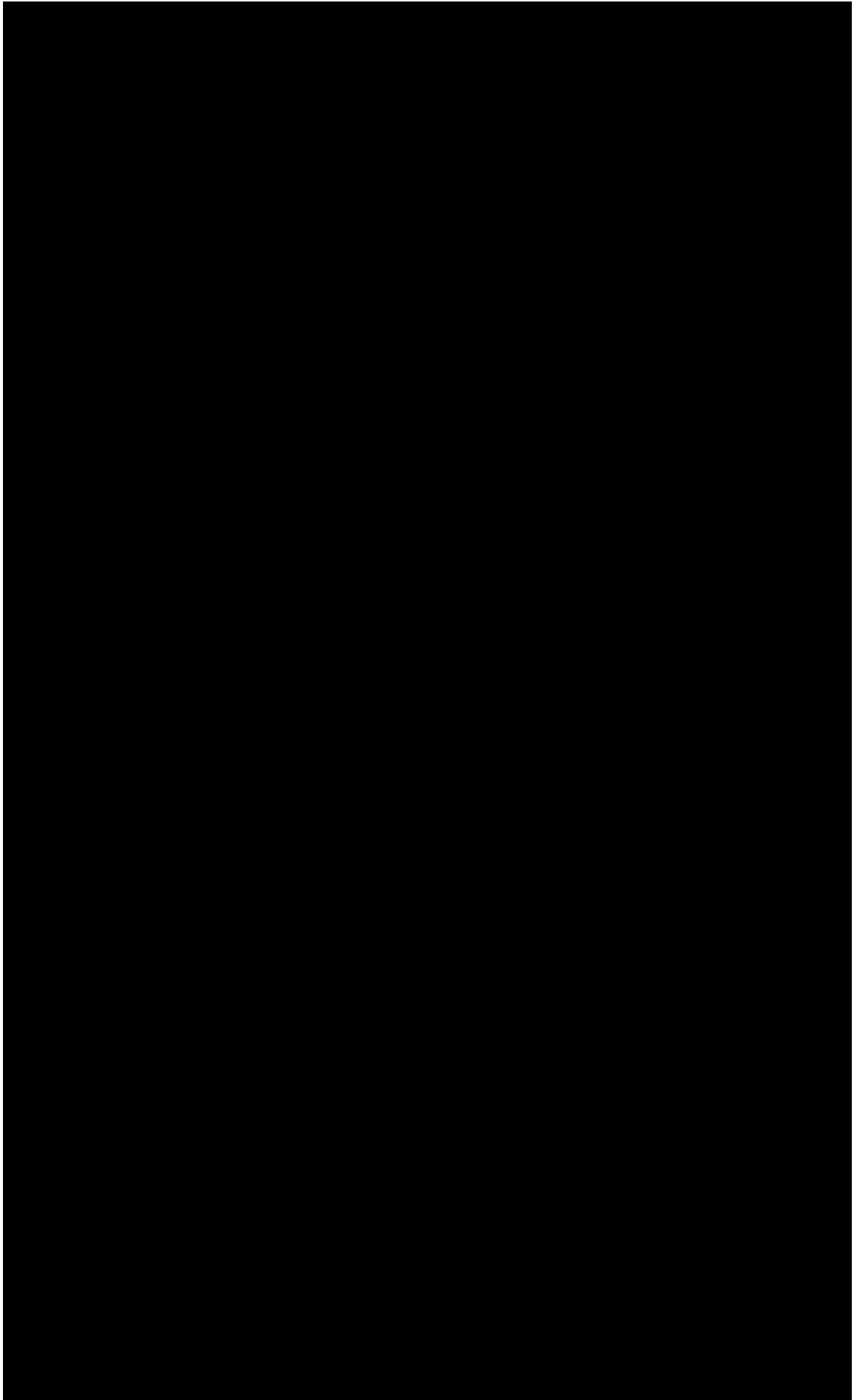
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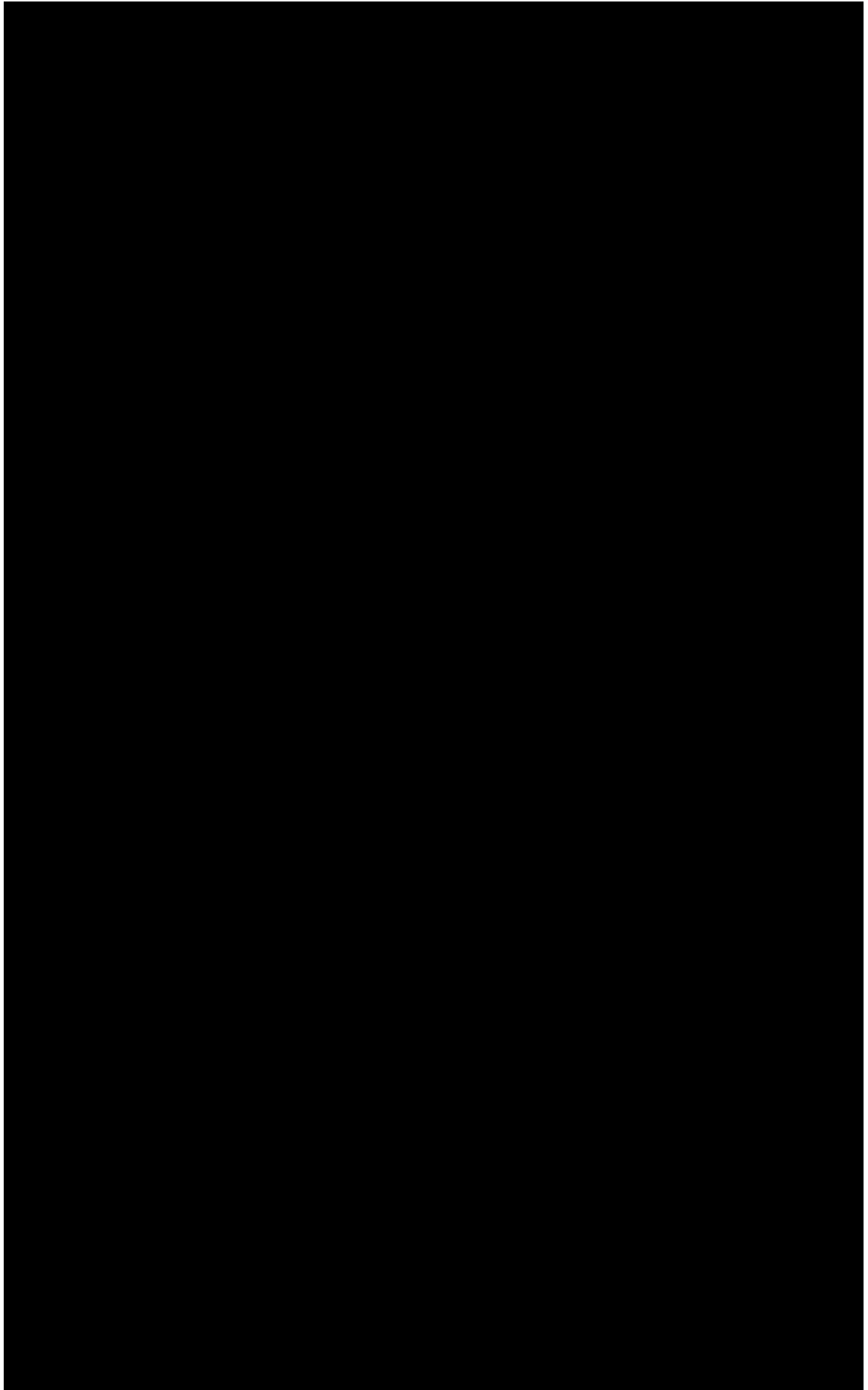
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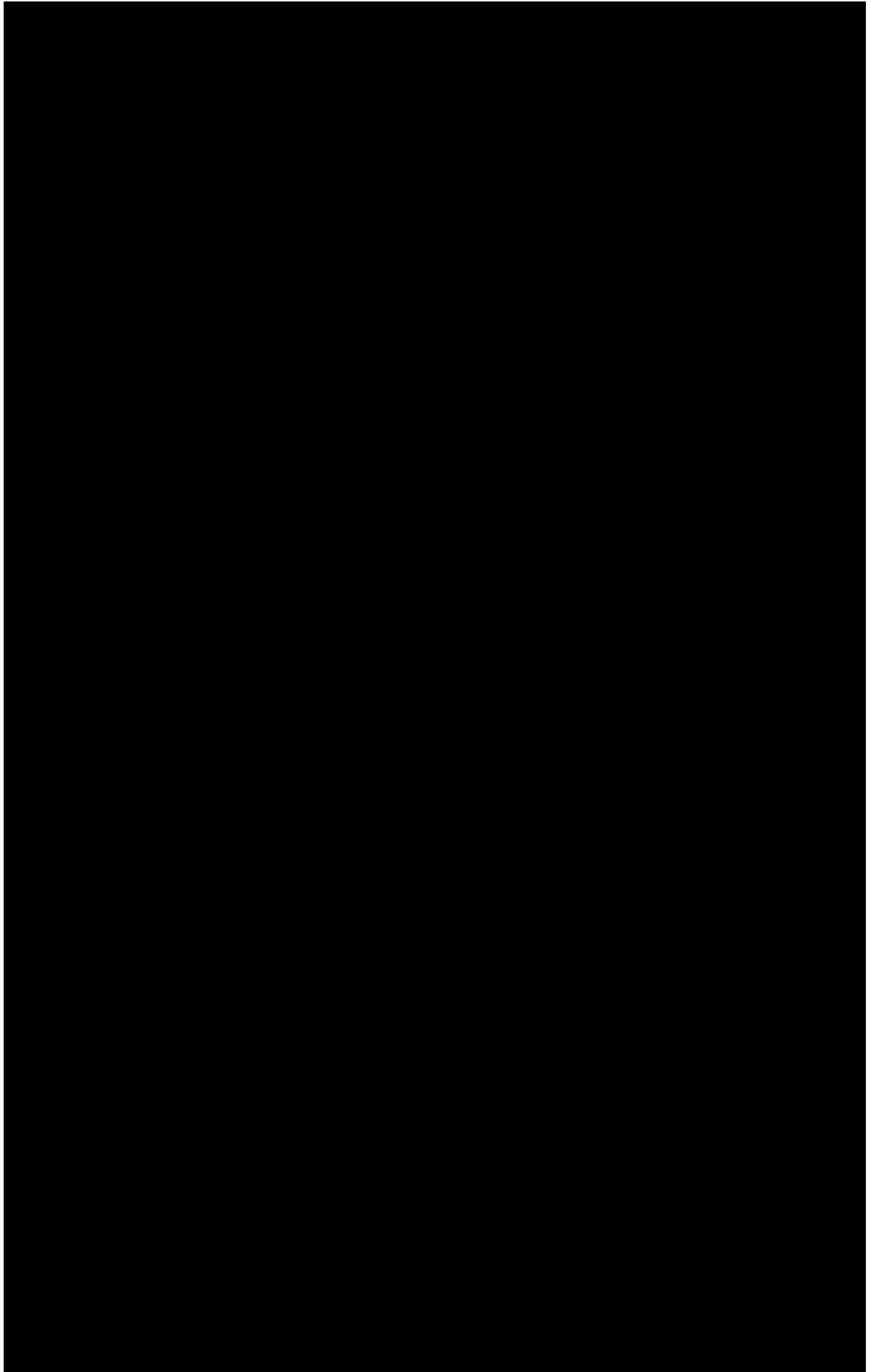
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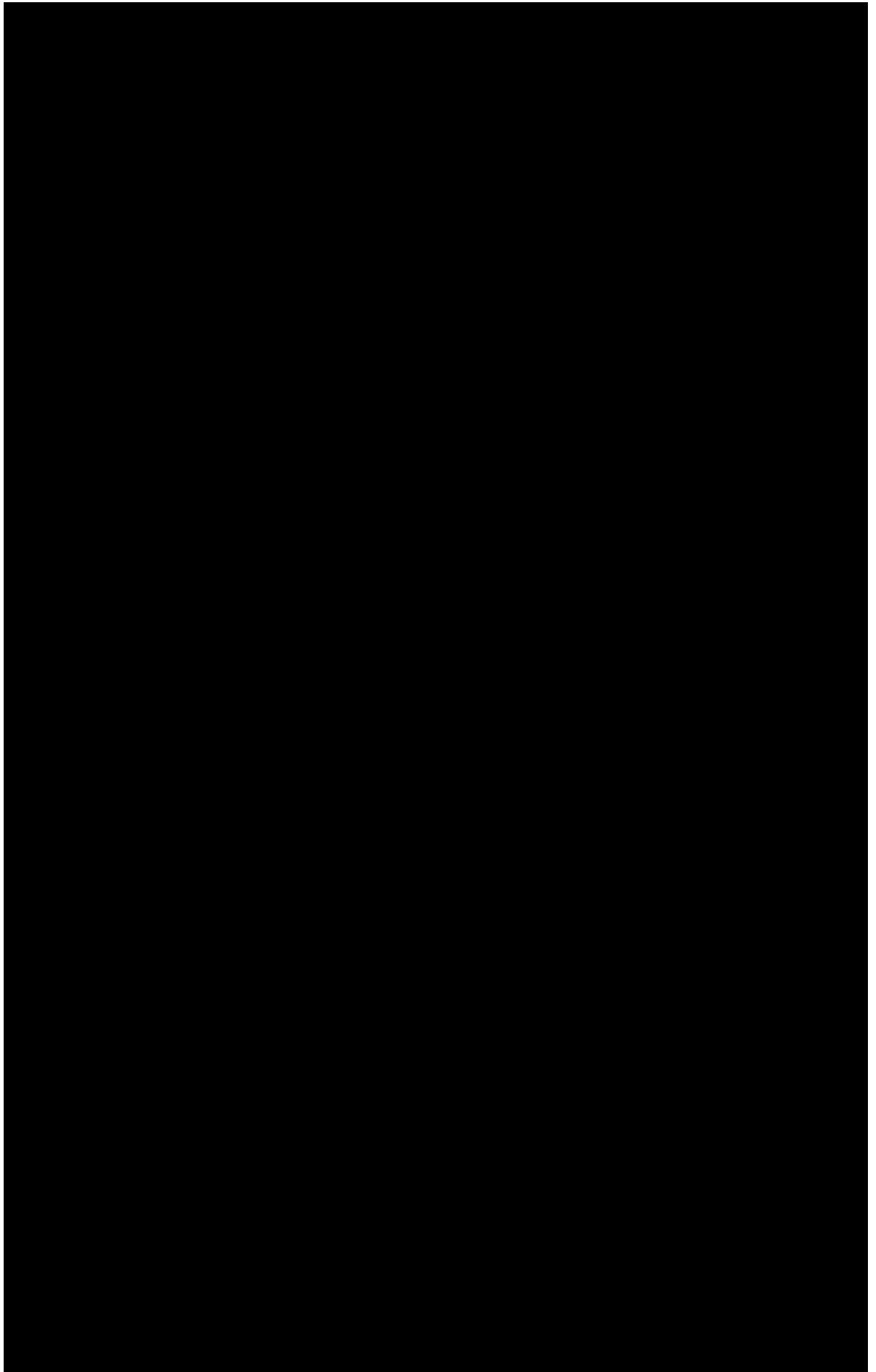
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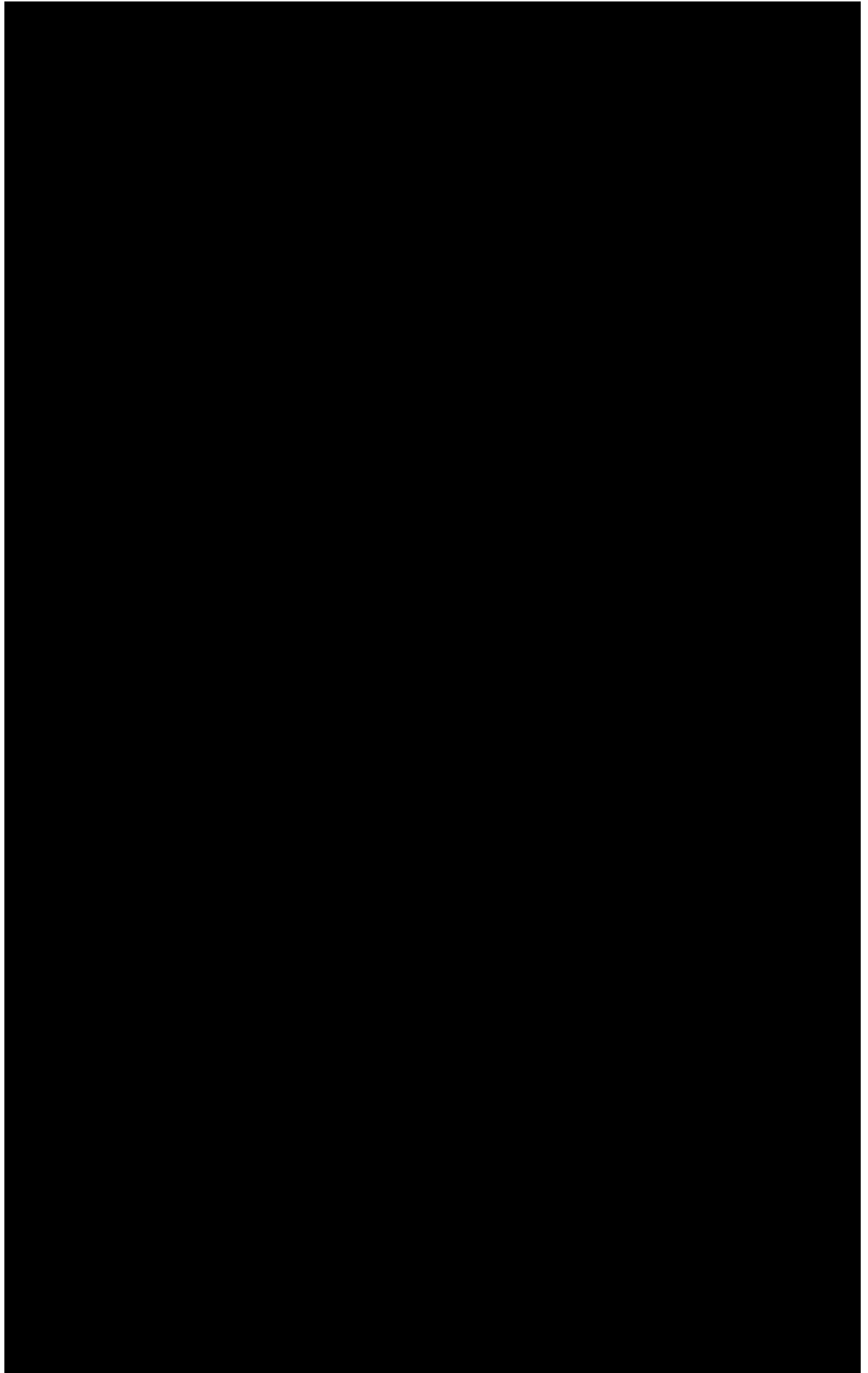
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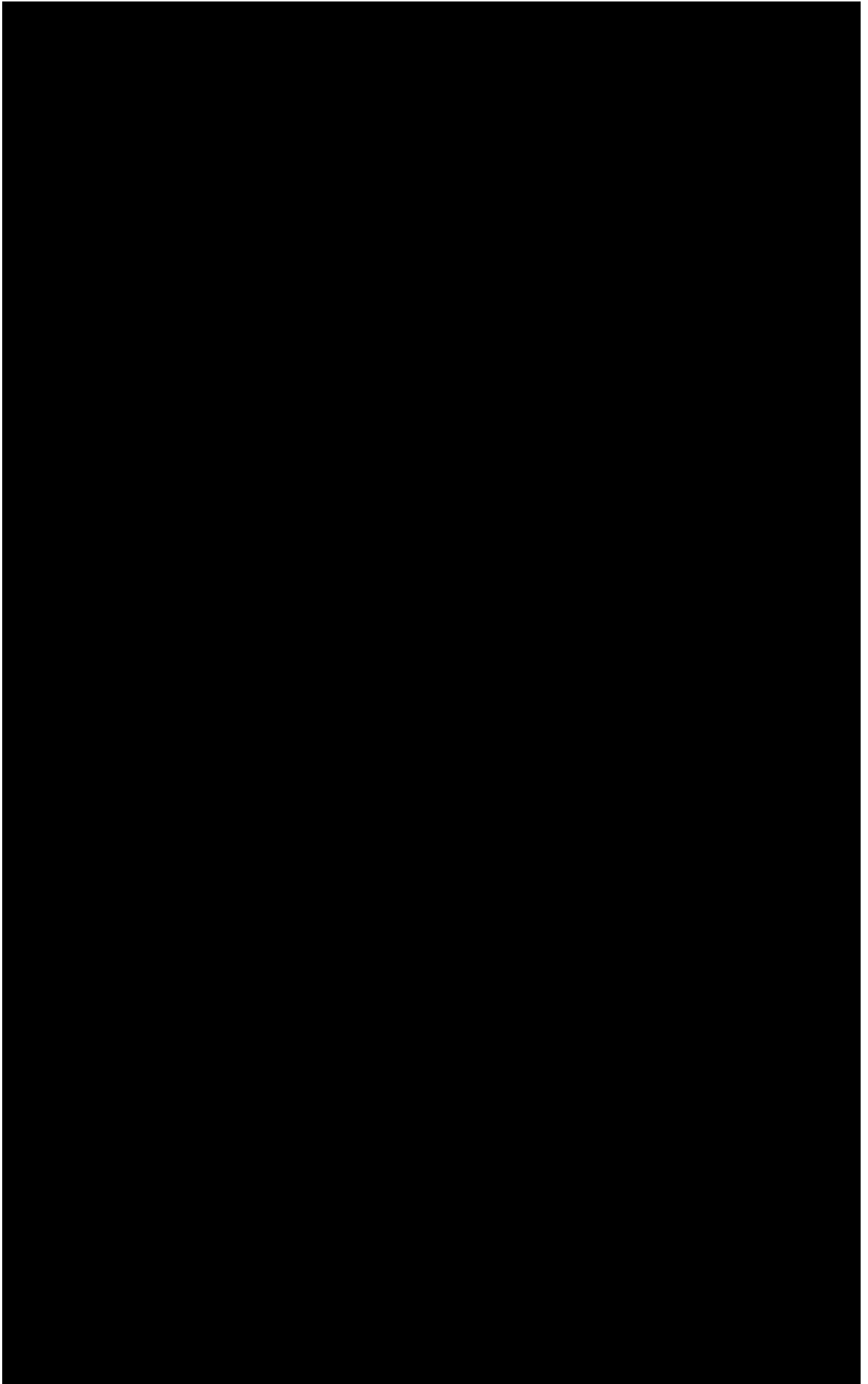
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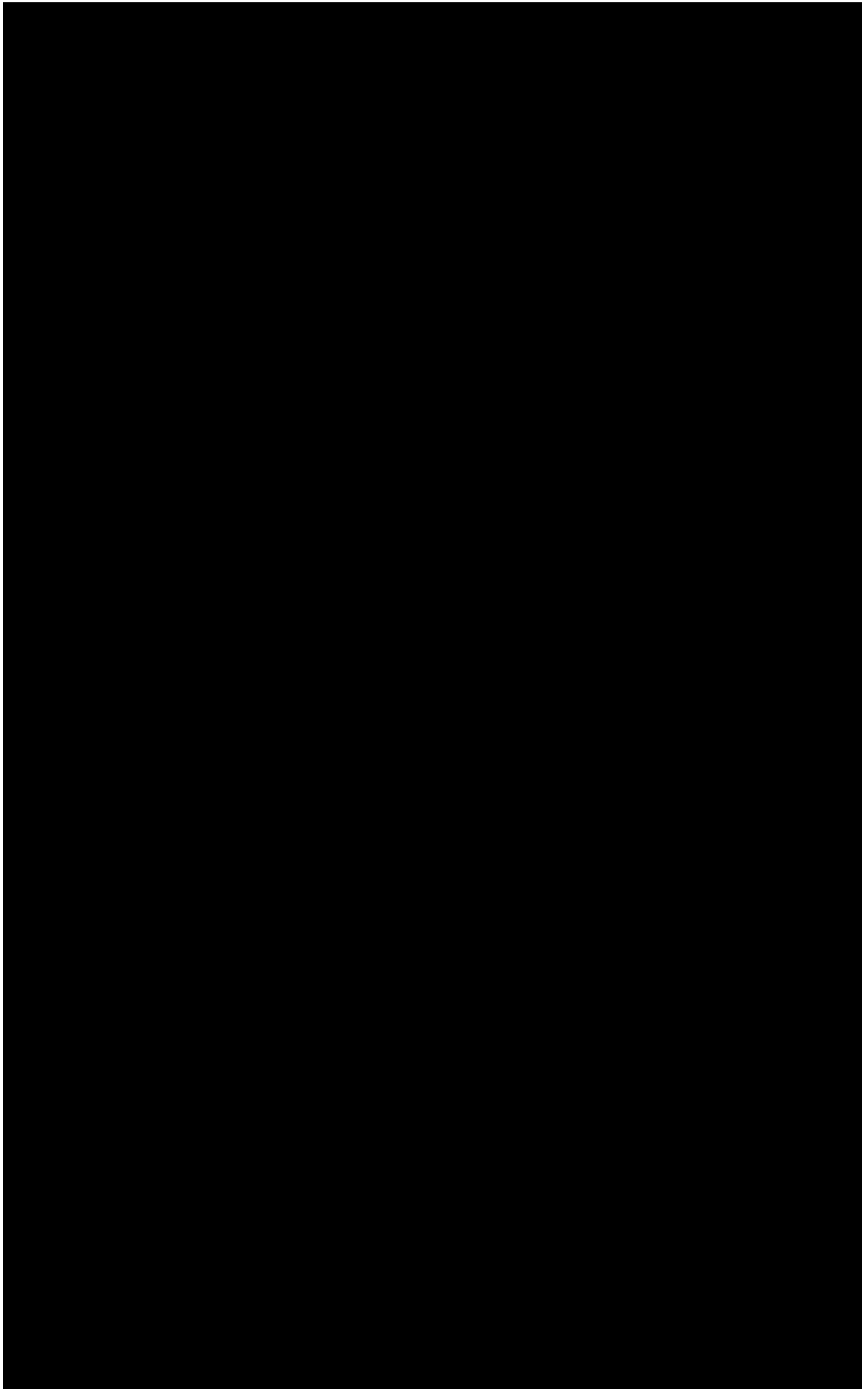
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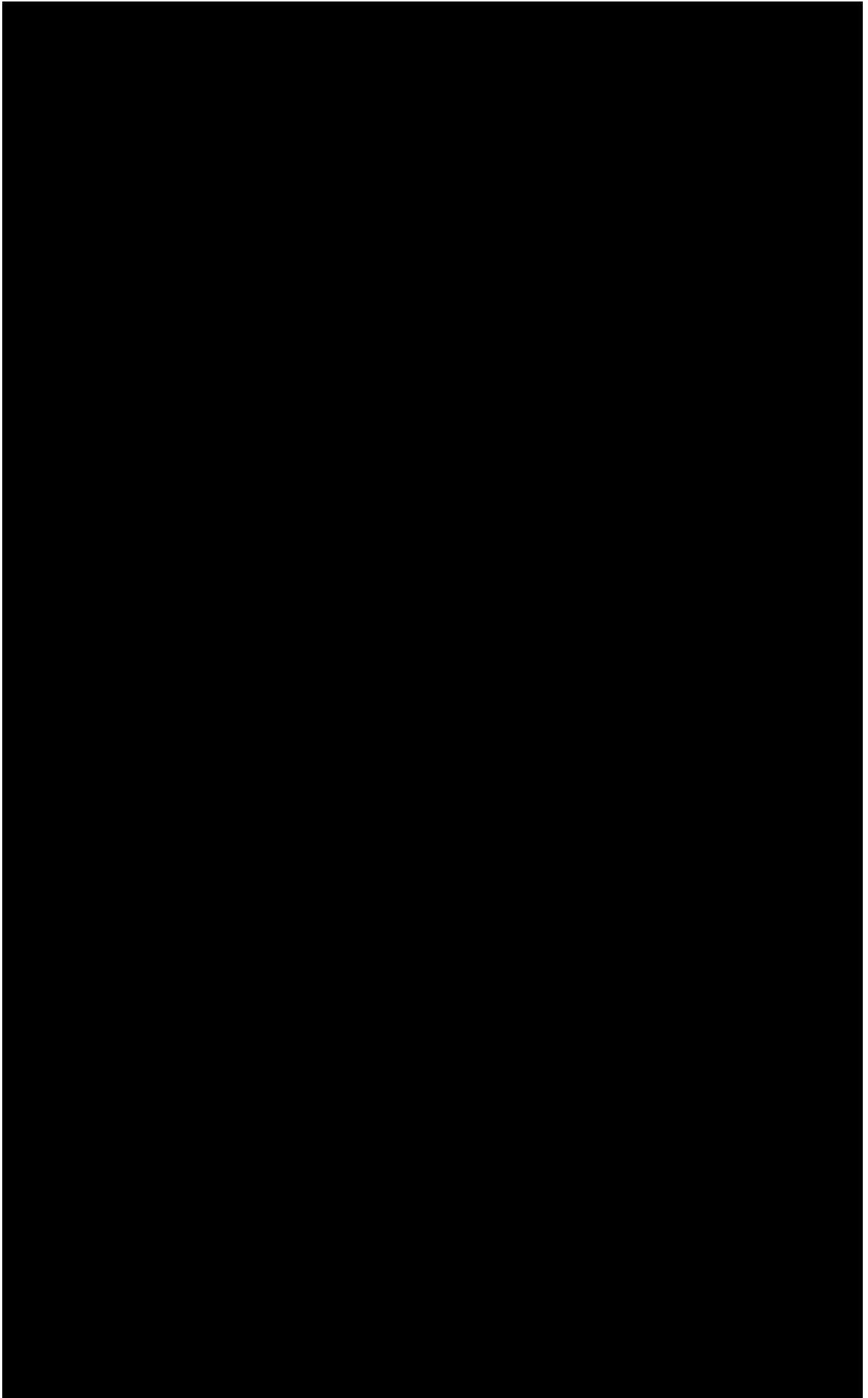
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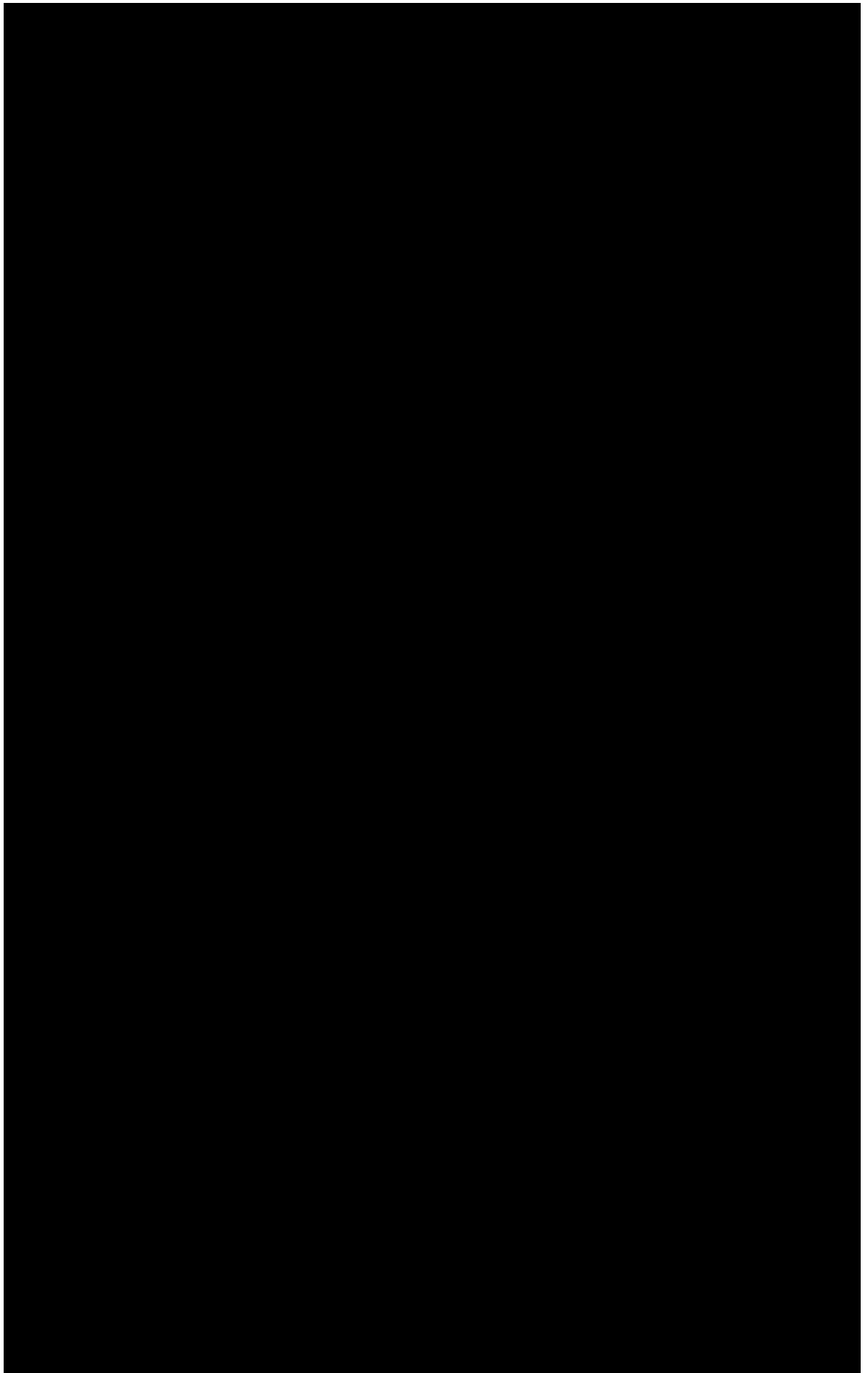
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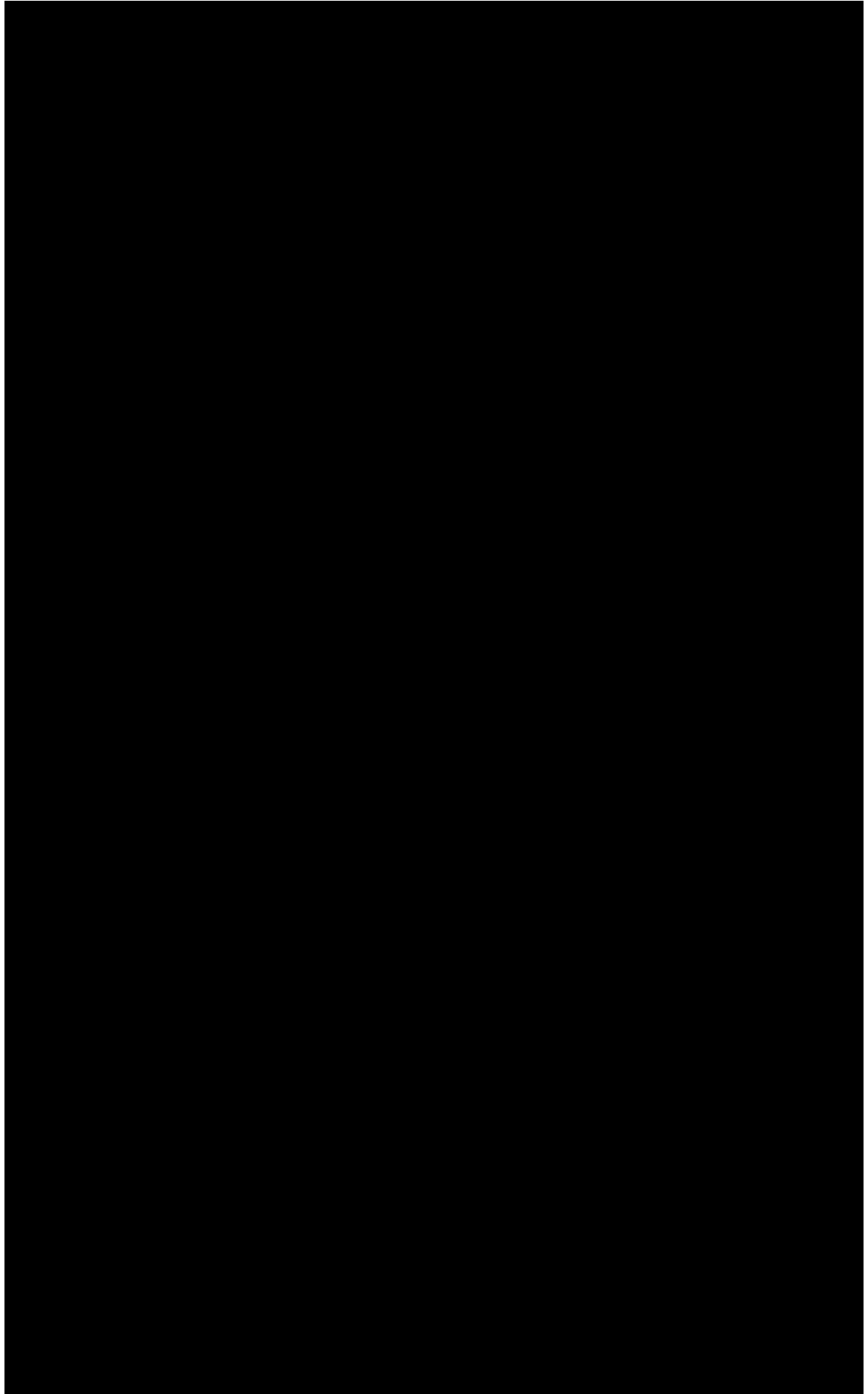
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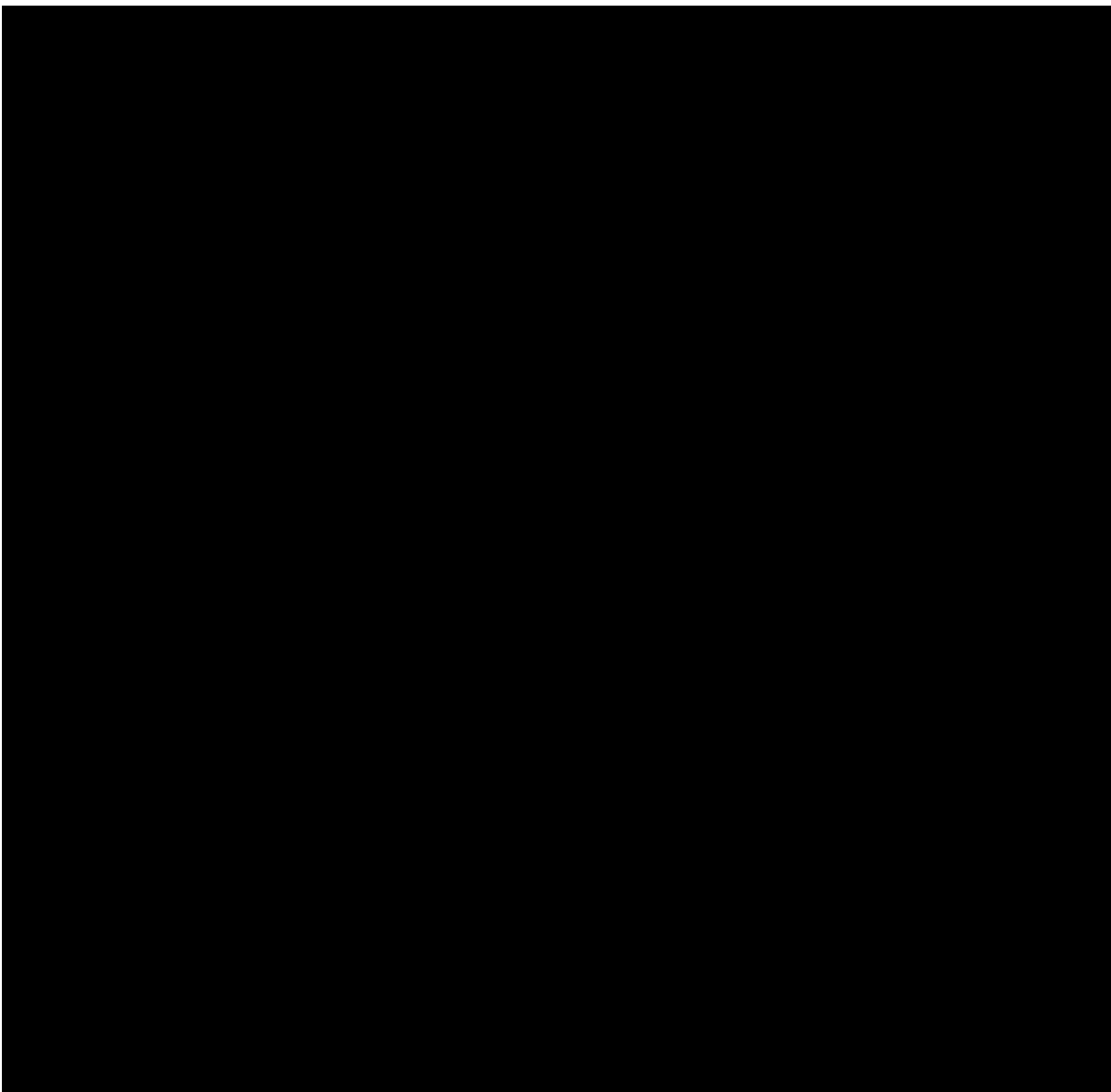
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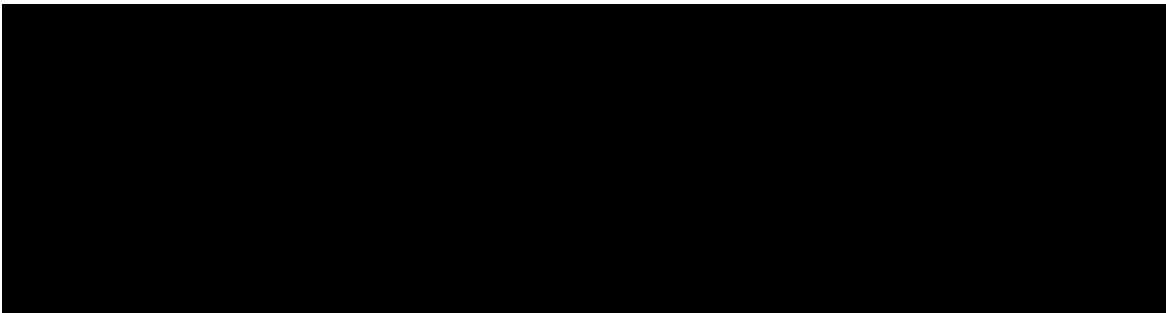


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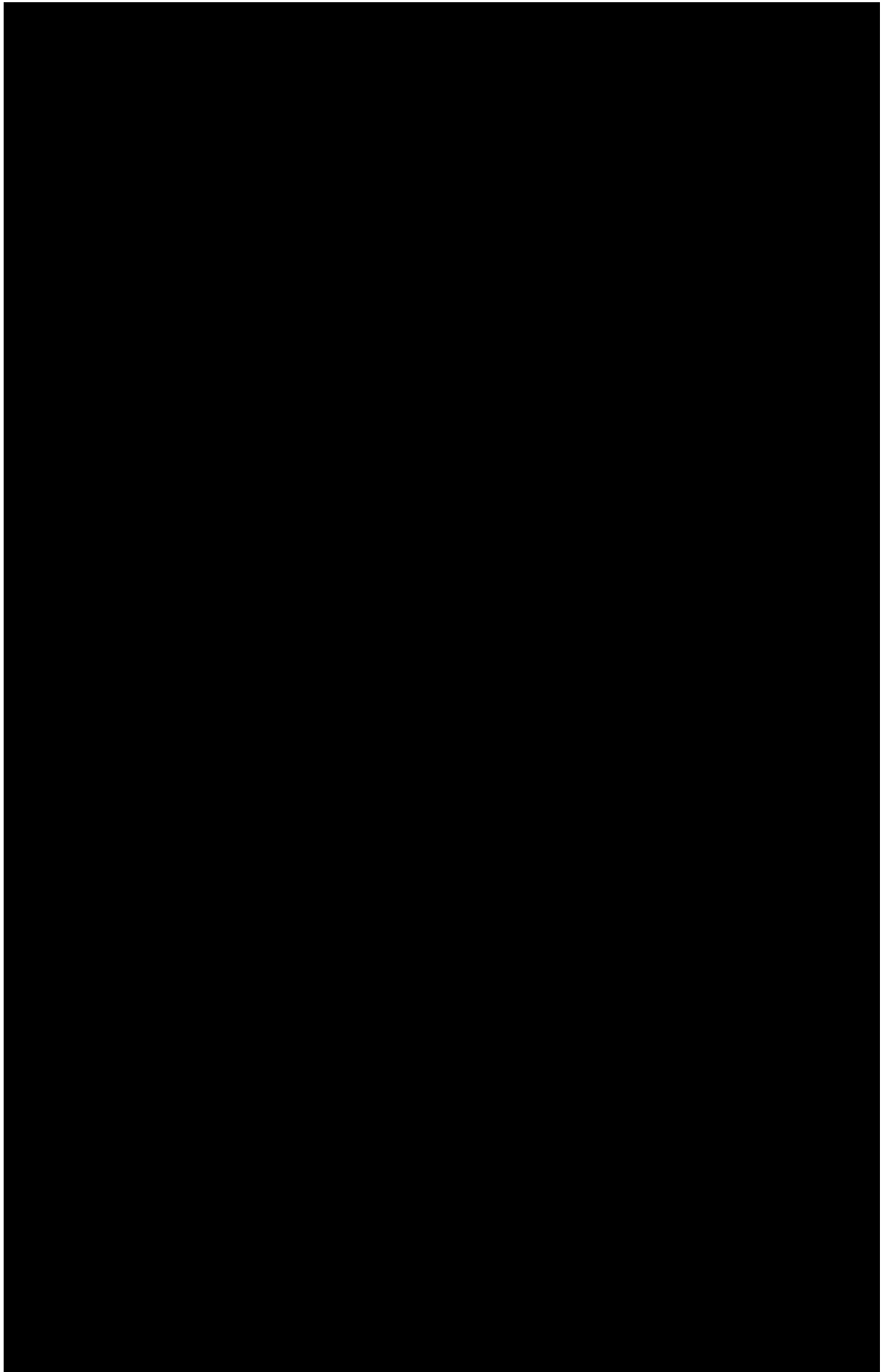


(WHEREUPON, a certain document was
marked CVS - Elsner Deposition
Exhibit No. 48, for identification,
as of 01/24/2019.)

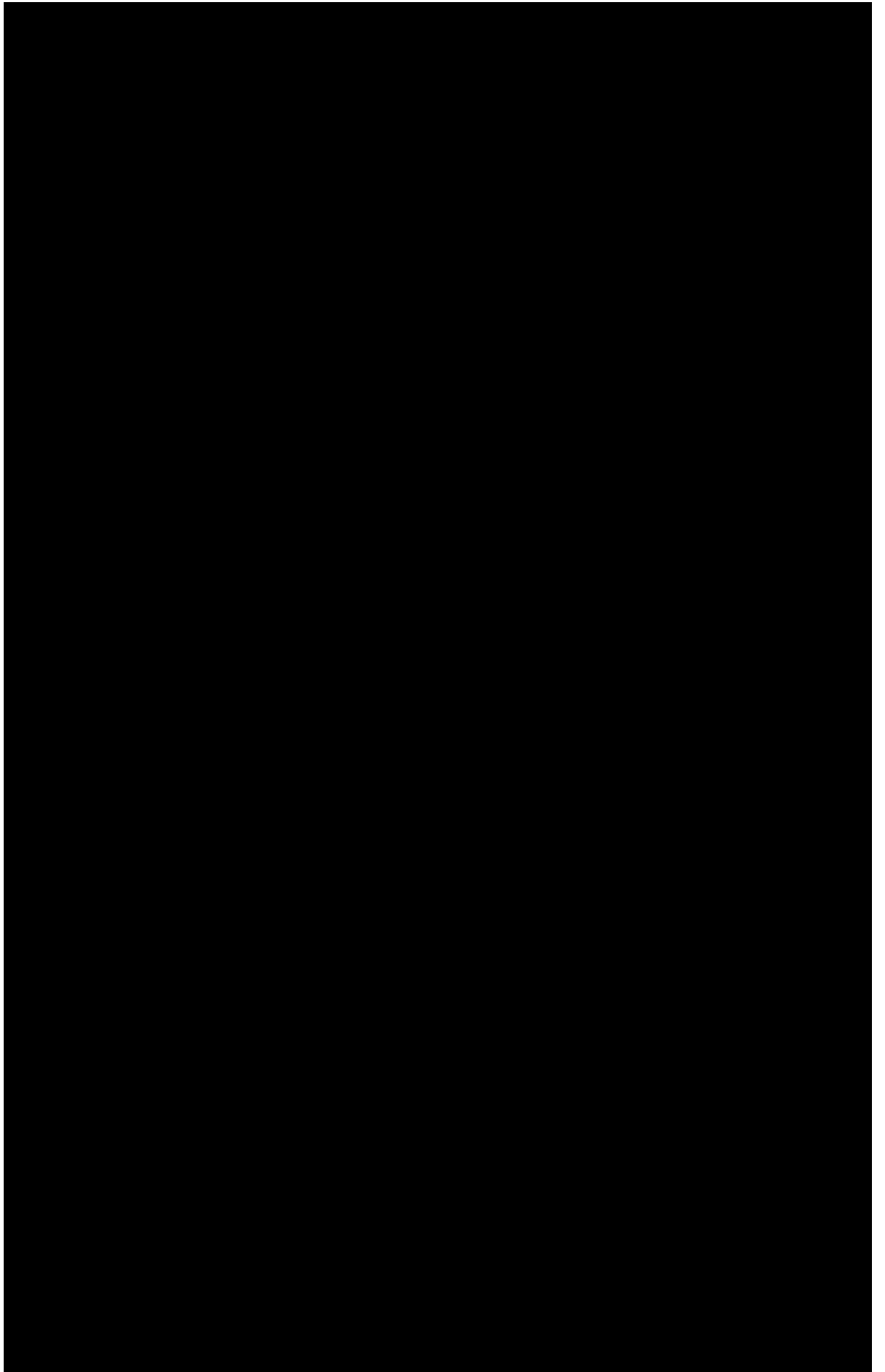
BY MR. ELSNER:



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3 Q. Except not for the centers that lost their
4 license, right?

5 A. Yeah, yeah, it make -- make it easier,
6 yeah, that's a good point, you know.

7 MR. ELSNER: Can I see Motley Rice 57. Well,
8 let me see 49, but I'm probably going to jump to 57.

9 (WHEREUPON, a certain document was
10 marked CVS - Elsner Deposition
11 Exhibit No. 49, for identification,
12 as of 01/24/2019.)

13 BY MR. ELSNER:

14 Q. Let me show you what we've marked as
15 Exhibit 49.

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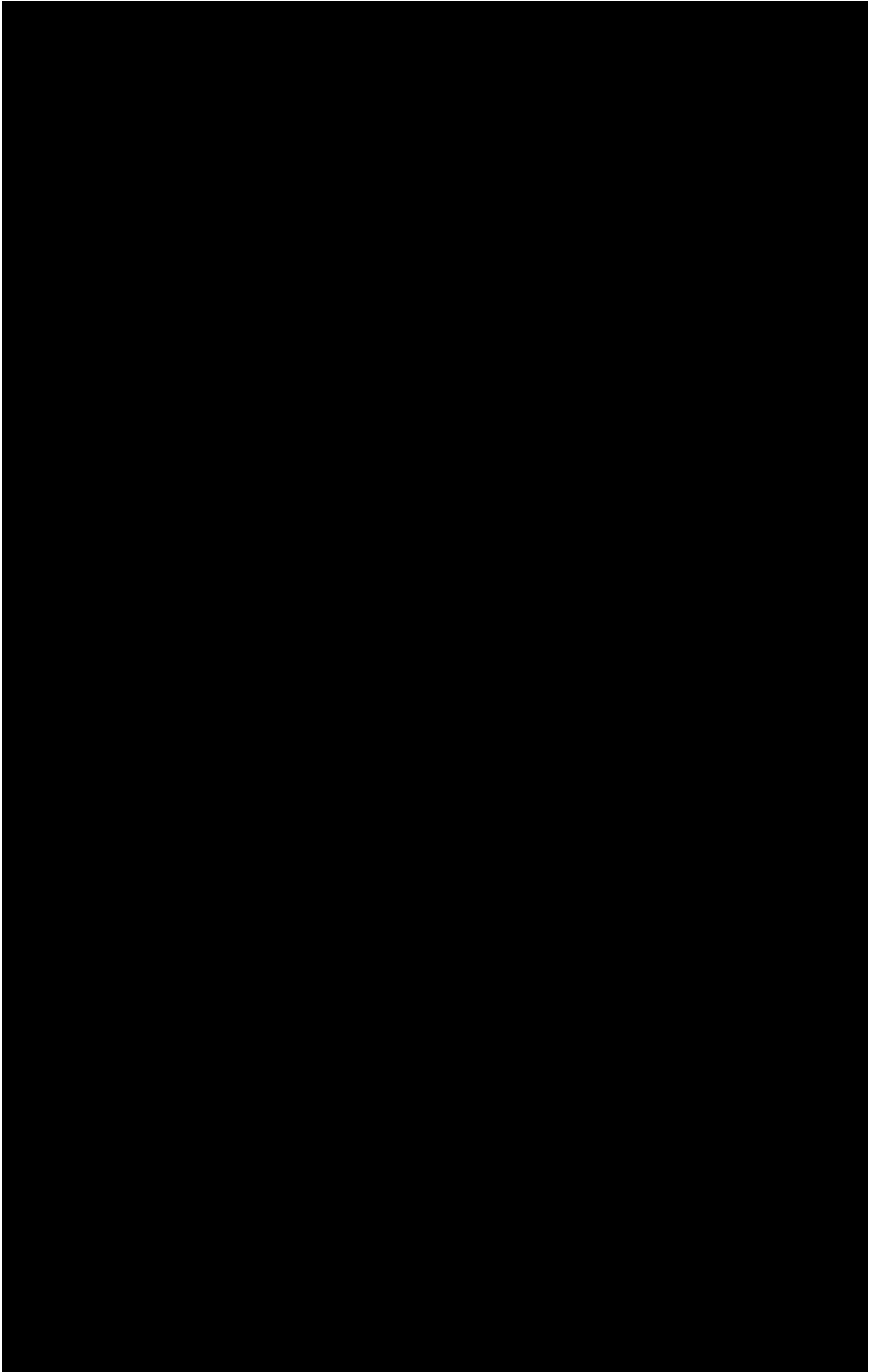
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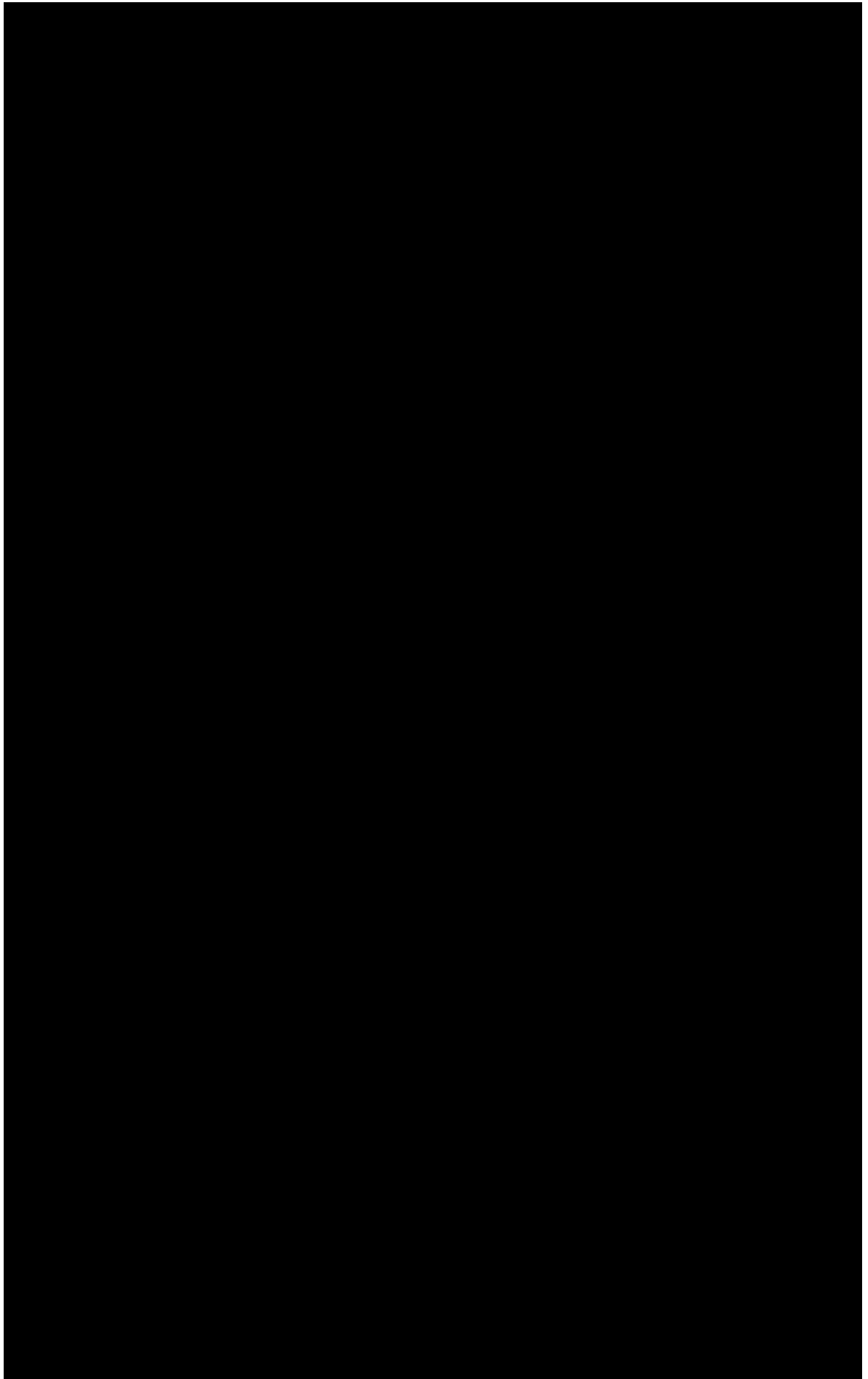
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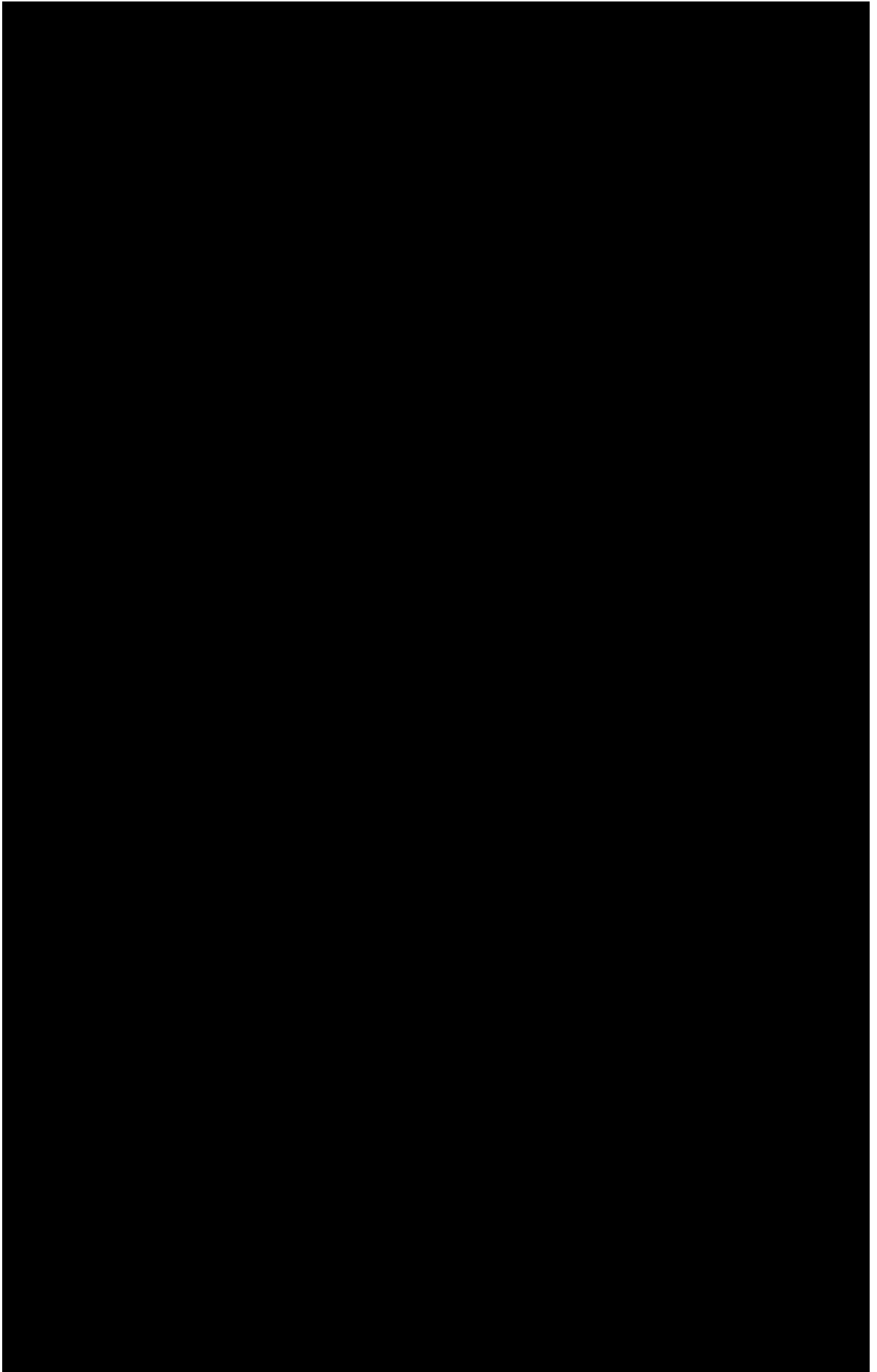
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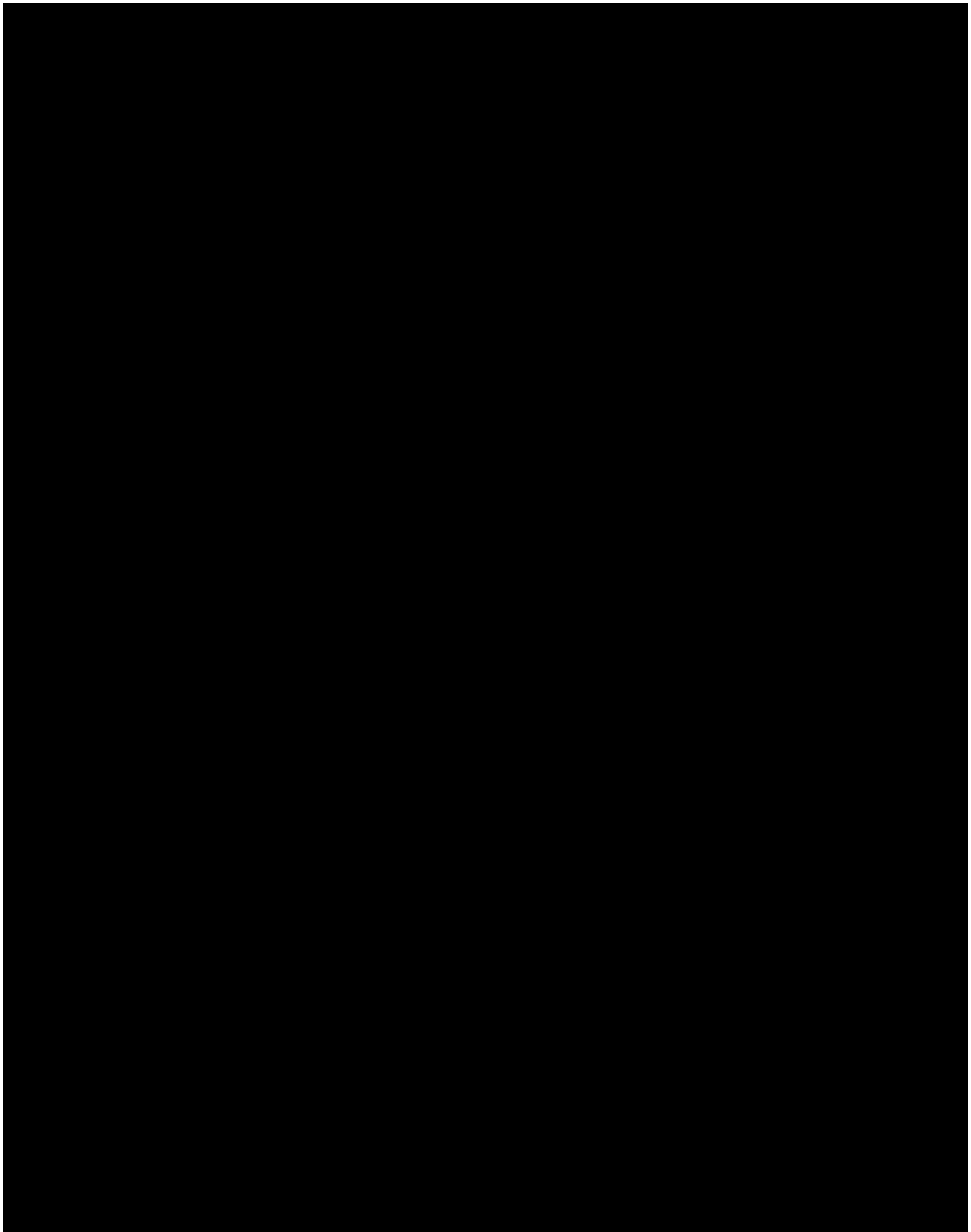
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20 Q. Do you recall --

21 MR. ELSNER: Why don't we go off the record real
22 quick.

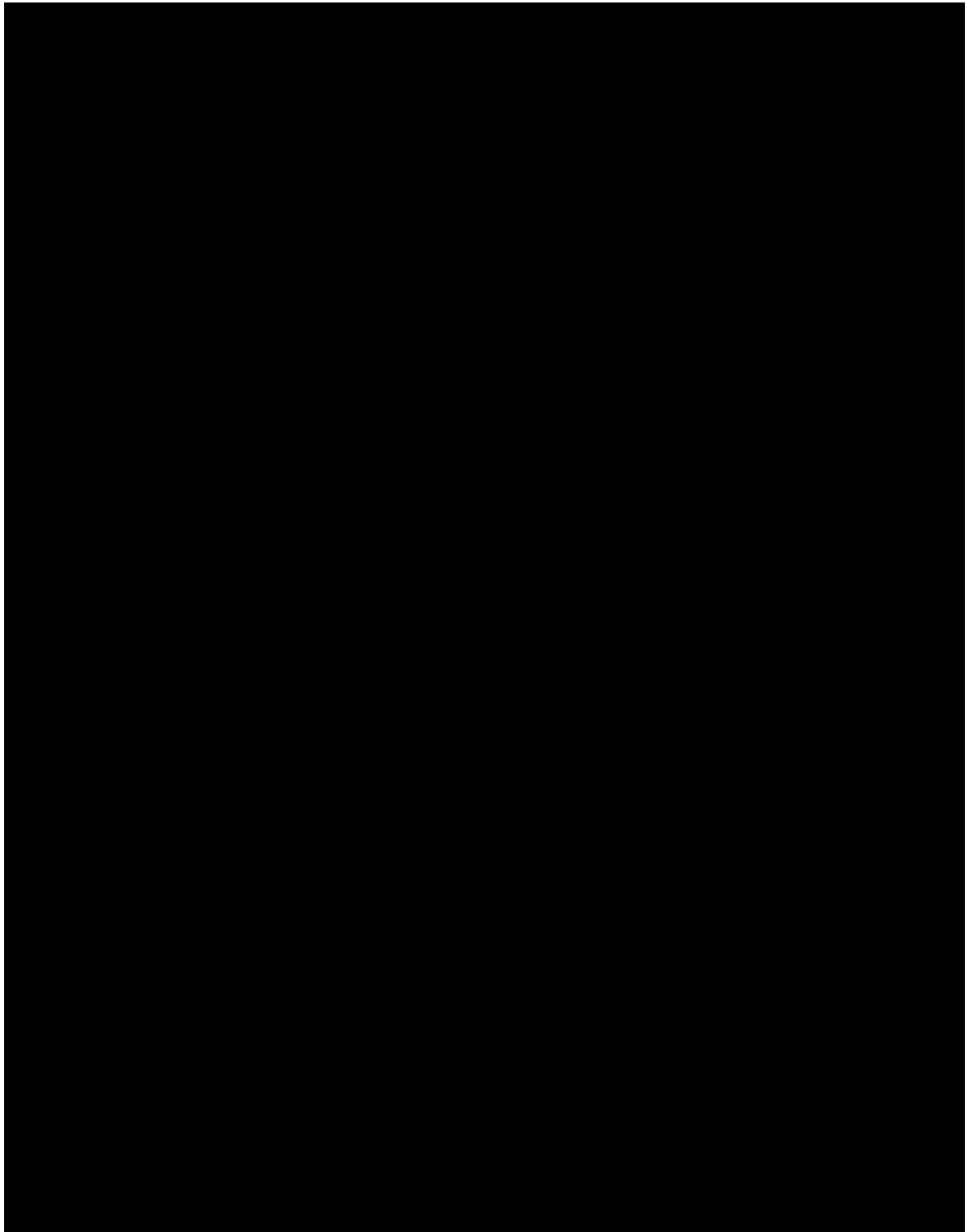
23 THE VIDEOGRAPHER: We are off the record at
24 4:03 p.m.

1 (WHEREUPON, a recess was had
2 from 4:03 to 4:14 p.m.)

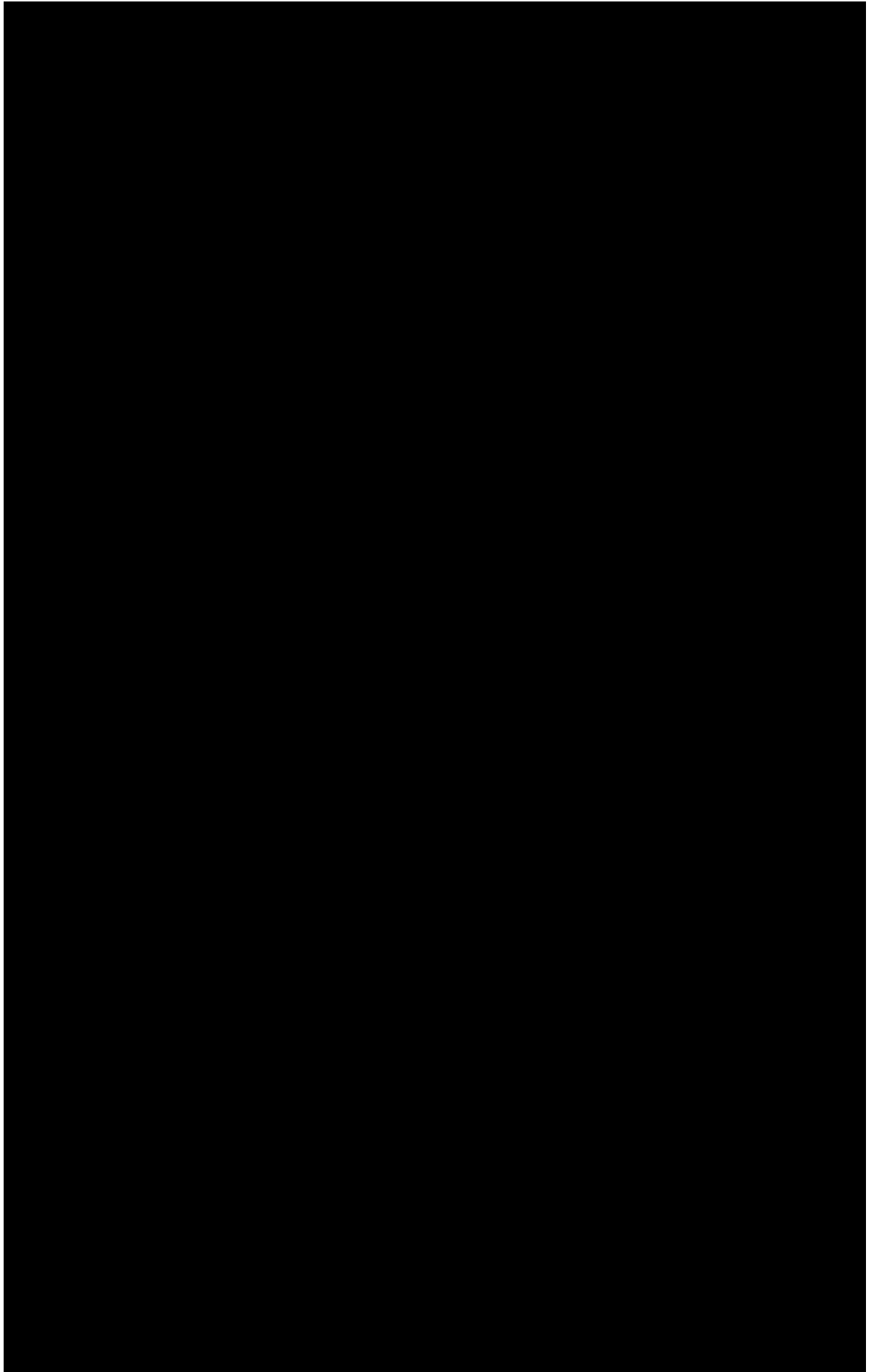
3 THE VIDEOGRAPHER: We are back on the record at
4 4:14 p.m.

5 BY MR. ELSNER:

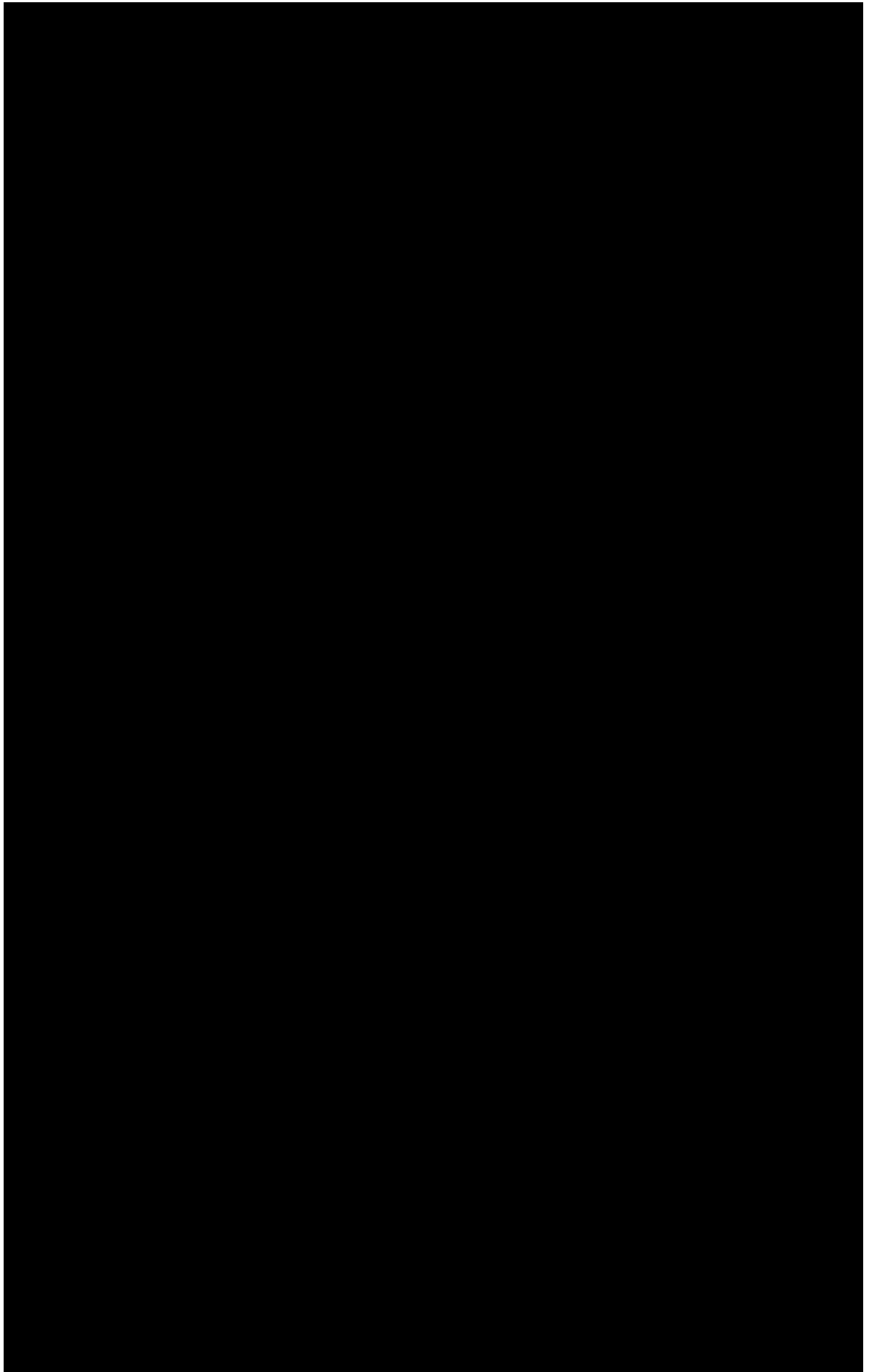
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A. -- it didn't seem -- yeah.

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(WHEREUPON, a certain document was

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marked CVS - Elsner Deposition

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Exhibit No. 50, for identification,

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as of 01/24/2019.)

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BY MR. ELSNER:

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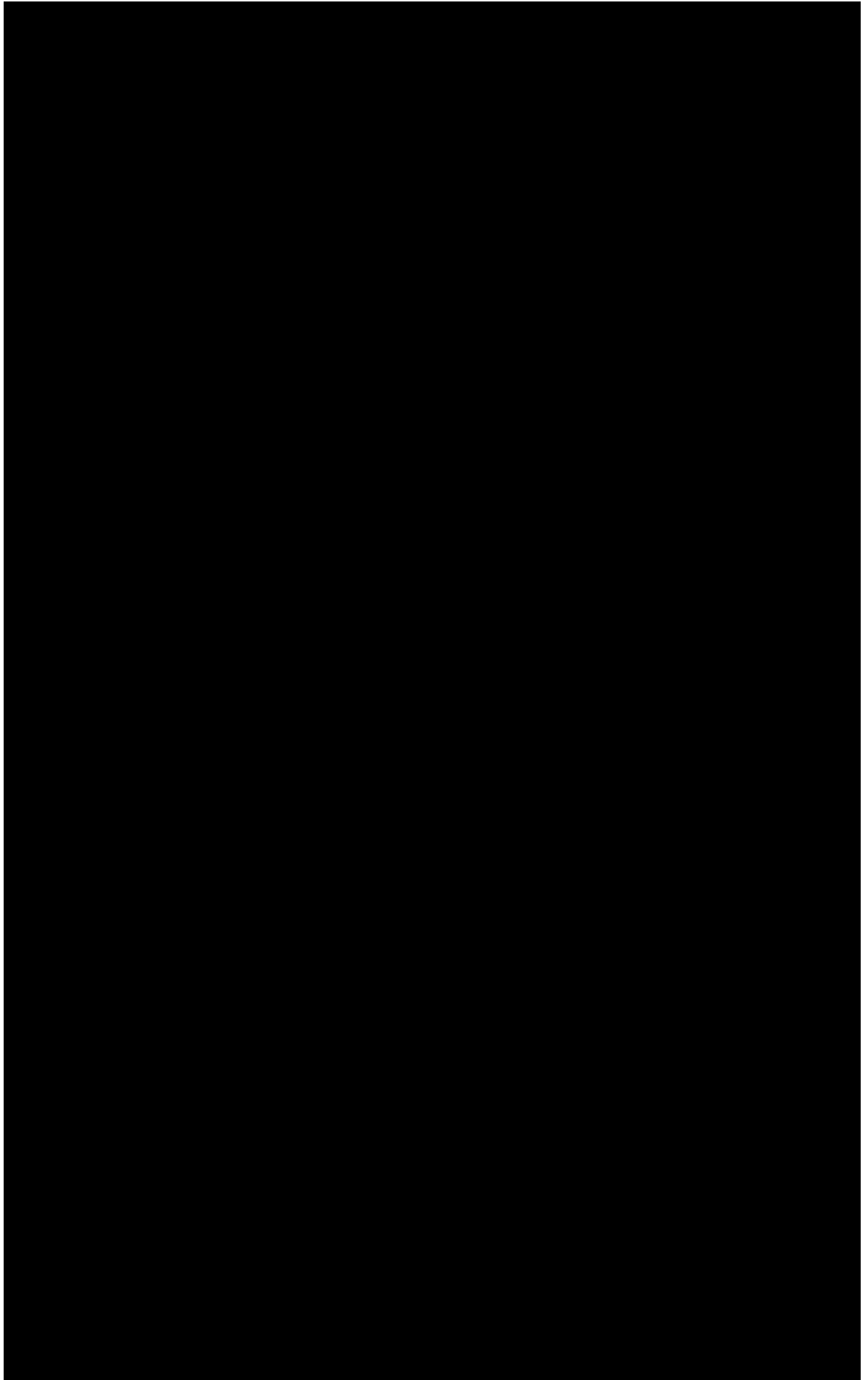
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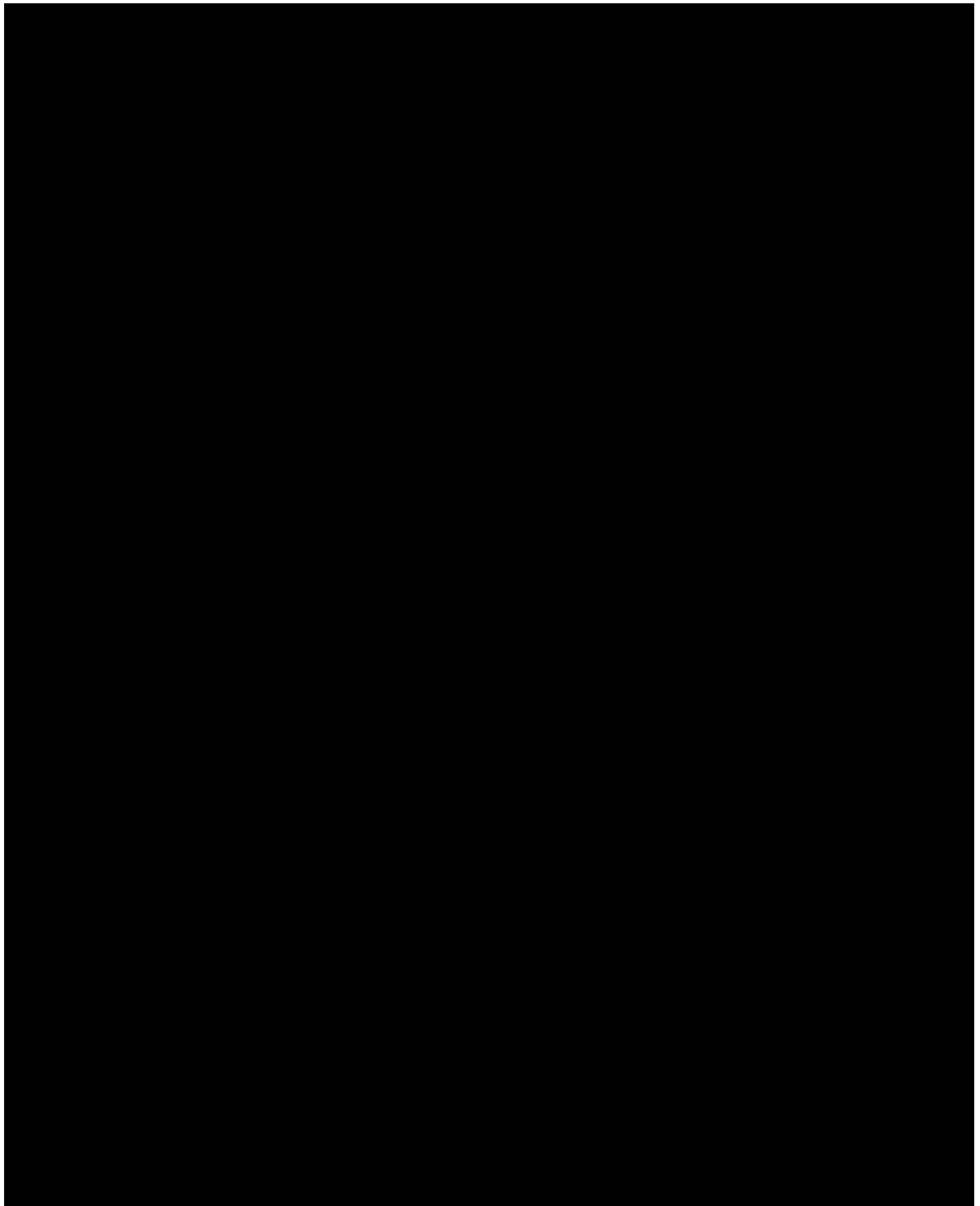
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20 BY MR. ELSNER:

21 Q. But you did your best, didn't you, to --

22 to --

23 A. Oh, I always did my best at my job, but...

24 Q. And you did your best with the -- with the

1 staff you had and the system that you were given,
2 right?

3 A. Correct.

4 MR. ELSNER: Okay. I -- I don't think I have
5 any other questions. I pass the witness.

6 EXAMINATION

7 BY MR. CLARK:

8 Q. Mr. Baker, I just have a couple of very
9 brief clarification questions.

10 Is that all right?

11 A. Sure. Sure, sure.

12 Q. Do you remember today being shown a number
13 of e-mails where you identified for more senior
14 officials at CVS certain areas of improvement that you
15 had identified in the SOM practices and procedures?

16 A. Yes.

17 Q. I gather you understood it was an open
18 environment where you could readily raise such issues,
19 correct?

20 MR. ELSNER: Objection.

21 BY THE WITNESS:

22 A. Oh, yeah, yeah.

23 BY MR. CLARK:

24 Q. Was there ever a time when you felt you

1 did not have the resources or time to complete your
2 job?

3 A. That's kind of -- I think we had the
4 resources I needed to do my job. Time, that's --
5 that's hard to answer that because I -- you know,
6 sometimes I could get done early, sometimes I could
7 get done later. If the reports -- the internet were
8 slow, your report would come in, say, 15 minutes
9 instead of two minutes, that kind of stuff, so.

10 I wouldn't say I didn't have enough time.
11 It just took time. You know, sometimes it was longer
12 than others a bit.

13 Q. You were always able to perform your job
14 then?

15 A. Correct, yeah, I always left the day able
16 to sleep at night.

17 Q. And I think, moving to another topic,
18 there were a number of times today when you were
19 testifying about the staffing of the SOM team after
20 Mr. Burtner's leaving CVS.

21 Do you remember that?

22 A. Correct.

23 Q. And I think a couple of times you
24 testified that it was you and Shauna Helfrich who were

1 the individuals performing those functions after Aaron
2 Burtner left?

3 A. Correct.

4 Q. And then a number of times you've also
5 testified about DEA consultants that were brought
6 in --

7 A. Yes.

8 Q. -- after Mr. Burtner's leaving CVS?

9 A. Um-hum.

10 Q. Were they also assisting in the SOM?

11 A. I believe so.

12 MR. ELSNER: Objection. Foundation.

13 BY MR. CLARK:

14 Q. Is it your understanding that the DEA
15 consultants that were brought in after Mr. Burtner's
16 leaving CVS were assisting the SOM?

17 A. Yes.

18 MR. ELSNER: Objection.

19 BY THE WITNESS:

20 A. That's my understanding.

21 MR. ELSNER: Same -- same objection.

22 BY MR. CLARK:

23 Q. Mr. Baker, during your time at CVS, were
24 you aware of any time when a CVS distribution center

1 shipped a suspicious order to a CVS Pharmacy?

2 A. Am I aware that it happened? Not that I
3 recall.

4 MR. CLARK: Thank you. I have no further
5 questions.

6 MR. ELSNER: I think we are done. Thank you.

7 THE VIDEOGRAPHER: We are off the record at
8 4:22 p.m. This concludes the videotaped deposition of
9 Kelly Baker.

10 (Time Noted: 4:22 p.m.)

11 FURTHER DEPONENT SAITH NOT.

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1 REPORTER'S CERTIFICATE

2

3 I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604,
4 a Certified Shorthand Reporter, do hereby certify:

5 That previous to the commencement of the
6 examination of the witness herein, the witness was
7 duly sworn to testify the whole truth concerning the
8 matters herein;

9 That the foregoing deposition transcript
10 was reported stenographically by me, was thereafter
11 reduced to typewriting under my personal direction and
12 constitutes a true record of the testimony given and
13 the proceedings had;

14 That the said deposition was taken before
15 me at the time and place specified;

16 That I am not a relative or employee or
17 attorney or counsel, nor a relative or employee of
18 such attorney or counsel for any of the parties
19 hereto, nor interested directly or indirectly in the
20 outcome of this action.

21 IN WITNESS WHEREOF, I do hereunto set my
22 hand on this 28th day of January, 2019.

23

24 JULIANA F. ZAJICEK, Certified Reporter

1 DEPOSITION ERRATA SHEET

2

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4 Case Caption: In Re: National Prescription

5 Opiate Litigation

6

7 DECLARATION UNDER PENALTY OF PERJURY

8

9 I declare under penalty of perjury that I
10 have read the entire transcript of my Deposition taken
11 in the captioned matter or the same has been read to
12 me, and the same is true and accurate, save and except
13 for changes and/or corrections, if any, as indicated
14 by me on the DEPOSITION ERRATA SHEET hereof, with the
15 understanding that I offer these changes as if still
16 under oath.

17

18 KELLY JAMES BAKER

19

20 SUBSCRIBED AND SWORN TO

21 before me this day

22 of , A.D. 20__.

23

24 Notary Public

1 DEPOSITION ERRATA SHEET

2 Page No. _____ Line No. _____ Change to: _____

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23 SIGNATURE: _____ DATE: _____

24 KELLY JAMES BAKER

1 DEPOSITION ERRATA SHEET

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24 KELLY JAMES BAKER